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IN THE CIRCUIT COURT
OF JEFFERSON COUNTY, MISSISSIPPI

EZELL THOMAS, et al.,
Plaintiffs,

AND

OWENS CORNING (AS TO
TOBACCO DEFENDANTS ONLY),
Third Party Plaintiffs,

VERSUS

CIVIL ACTION NO. 96-0065

R. J. REYNOLDS, TOBACCO
COMPANY., et al.,
Tobacco Defendants,

AND

AMCNEM PRODUCTS, INC., et al.
Asbestos Defendants.

DEPOSITION OF DR. ALVIN WILLIAMS

Taken at the Offices of Baker, Donelson,
Beaman & Caldwell, 4268 I-55 North,
Meadowbrook Office Park, Jackson,
Mississippi, on Tuesday, April 3, 2001,
beginning at 9:05 a.m.

REPORTED BY:

JANNA WHITE, CSR #1312
State-Wide Reporters
764 Water Street (39530)
Post Office Box 389 (39533)
Biloxi, Mississippi
Telephone: (228) 432-0770
Fax: (228) 432-0690
msreporters@aol.com

1 **APPEARANCES:**

2 TIM GRAY, ESQUIRE
3 Forman, Perry, Watkins, Krutz
4 & Tardy, PLLC
5 Suite 1200, One Jackson Place
6 188 E. Capitol
7 Jackson, Mississippi 39201
8 ATTORNEY FOR OWENS CORNING

9 WALKER B. JONES, III, ESQUIRE
10 Baker, Donelson, Bearman & Caldwell
11 4268 I-55 North
12 Meadowbrook Office Park
13 Jackson, Mississippi 39211
14 ATTORNEY FOR PHILIP MORRIS, INC.

15 BRIAN JACKSON, ESQUIRE
16 Shook, Hardy & Bacon
17 One Kansas City Place
18 1200 Main Street
19 Kansas City, Missouri 64105
20 ATTORNEY FOR PHILIP MORRIS, INC.
21 AND LORILLARD TOBACCO COMPANY

22 ROBERT M. SASSER, III, ESQUIRE
23 GWENDA LAWS, ESQUIRE
24 Womble, Carlyle, Sandridge & Rice
25 150 Fayetteville Street Mall
26 Suite 2100
27 Raleigh, North Carolina 27602
28 ATTORNEYS FOR R.J. REYNOLDS TOBACCO
29 COMPANY

30 MARK CARROLL, ESQUIRE
31 Upshaw, Williams, Biggers, Beckham
32 & Riddic
33 Suite 300, Plaza One
34 715 South Pear Orchard Road
35 Ridgeland, Mississippi 39157
36 ATTORNEY FOR LORILLARD TOBACCO
37 COMPANY

1 APPEARANCES: (Continued)

2 BILL DURHAM, ESQUIRE
3 King & Spalding
4 191 Peachtree Street
5 Atlanta, Georgia 30303-1763
6 ATTORNEY FOR BROWN & WILLIAMSON TOBACCO
7 COMPANY

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STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition may be taken at the time and place hereinbefore set forth, by Janna White, C.S.R., Court Reporter and Notary Public, pursuant to the Mississippi Rules of Civil Procedure, as amended;

That the formality of **READING AND SIGNING** is specifically **NOT WAIVED**;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

DR. ALVIN J. WILLIAMS,

having been duly sworn, was examined and testified
as follows:

EXAMINATION

BY MR. GRAY:

Q. Good morning, Dr. Williams. My name is
Tim Gray.

A. Good morning.

Q. I represent Owens Corning in this matter.
Will you state your name for the record, please.

A. Alvin J. Williams.

(Exhibit 1 was marked.)

Q. I have marked the deposition notice as
Exhibit 1. I will set it here. Have you ever had
your deposition taken before, Dr. Williams?

A. Yes. I have, once.

Q. Once. What type of case was that?

A. It was the Scott case in the -- it was
tobacco related. It was in Louisiana.

Q. When did this deposition take place?

A. January 5th, year 2001.

Q. How long did that deposition go for?

A. From approximately 9:30 until about 4:15,
I believe. To the best of my memory.

Q. Sure. Has that case proceeded to trial?

1 A. I do not know.

2 Q. Do you intend to testify at trial in that
3 case?

4 A. I have not been asked. I don't have any
5 information regarding that.

6 Q. You may or may not?

7 A. I may or may not.

8 Q. Okay. Did you submit an expert report or
9 disclosure in that case?

10 A. Yes, I did.

11 (Exhibit 2 was marked.)

12 Q. I have marked as Exhibit 2 the disclosure
13 that was provided for you, Dr. Williams, in this
14 case. If you will take a look at that for a second
15 and let me know if that is consistent with your
16 understanding.

17 A. To the best of my knowledge, at this
18 point, it is.

19 Q. Okay. You did submit a report in the
20 Scott case, correct?

21 A. Could you repeat that, sir?

22 Q. Did you submit a report or an expert
23 disclosure statement in the Scott case?

24 A. Yes, I did.

25 Q. Okay. Was it called a report or a

1 disclosure; do you recall?

2 A. It was an expert statement.

3 Q. An expert statement. Did the expert
4 statement in the Scott case, was it similar to the
5 disclosure submitted in this case?

6 A. The expert report in the Scott case was
7 similar to the expert report in the Thomas case.

8 Q. As best as you can recall, were there any
9 issues covered in the report in the Scott case that
10 aren't covered in this report?

11 A. To the best of my knowledge, the issues
12 were similar.

13 Q. Okay. Who was the plaintiff in the Scott
14 case? Was it an individual smoker?

15 A. It was a class.

16 Q. Where was your deposition taken?

17 A. It was taken in New Orleans.

18 Q. Do you remember whose offices it was
19 taken at?

20 A. At this point, I don't.

21 Q. Do you remember the name of the attorney
22 who deposed you?

23 A. I do not remember her name.

24 Q. Who retained you originally in the Scott
25 case?

1 A. Are you referring to a particular group
2 of attorneys?

3 Q. Well, first, do you know which -- in this
4 case, you have been retained by R.J. Reynolds; is
5 that correct, sir?

6 A. That is my understanding.

7 Q. Was it the same attorneys for
8 R.J. Reynolds you worked -- well, were you retained
9 by R.J. Reynolds in the Scott case?

10 A. To my knowledge, in the Scott case, it
11 was King & Spalding or Brown & Williams, to the best
12 of my knowledge at this point.

13 MR. SASSER:

14 Tim, let me just say that he's here on
15 behalf of all the tobacco defendants. He is
16 retained by all.

17 MR. GRAY:

18 Okay. Fair enough. Robert, will y'all
19 provide a copy of that deposition, or we can take it
20 up at the break? I guess I'm requesting that y'all
21 do that.

22 MR. SASSER:

23 Let's do that.

24 Q. Dr. Williams, I'm sure you went over
25 these ground rules in your other deposition. So

1 just so we are clear, if you don't understand any
2 question I ask you, please ask me to repeat the
3 question. If you don't ask me to repeat the
4 question, I'm going to assume you understood what I
5 said. If you want to take a break, obviously, at
6 any time, this is your show. You can do so.

7 A. Thank you.

8 Q. Where were you born, Dr. Williams?

9 A. I was born in Mobile, Alabama.

10 Q. And did you grow up in Mobile?

11 A. I grew up in Prentiss, Mississippi.

12 Q. Where is Prentiss?

13 A. Prentiss is about 65 miles south of
14 Jackson.

15 Q. Along Highway 49?

16 A. It's probably about 30 miles east of
17 Highway 49.

18 Q. Do you smoke?

19 A. No.

20 Q. Have you ever smoked?

21 A. No.

22 Q. Dr. Williams, can you give me a basic
23 definition of marketing?

24 A. Marketing is the process of understanding
25 human needs and wants in the consumptional role and

1 the development of products and services to satisfy
2 those needs through exchange processes.

3 Q. What are some of those exchange
4 processes? Are you referring to methods of
5 marketing?

6 A. The core of marketing is the exchange
7 process. You have buyers and you have sellers. And
8 the primary job for marketers is to facilitate the
9 exchange process.

10 Q. Okay. Can you give me some of the ways
11 in which a seller or a marketer of a product will
12 market his or her product? For example, advertising
13 would be a component, correct?

14 A. Advertising is part of the marketing
15 process, but only one part of it.

16 Q. Okay. What are some of the other parts
17 of that process?

18 A. When developing a marketing strategy, you
19 look at promotion, which advertising would be part
20 of promotion, the product, pricing, place and
21 distribution considerations. Those are the four
22 factors that we normally look at in developing a
23 marketing strategy.

24 Q. Are those sometimes referred to as the
25 Four Ps?

1 A. That is correct.

2 Q. Can you give me a definition of promotion
3 or some examples of promotional activities?

4 A. Promotion is generally thought of as
5 integrated marketing communications to relevant
6 stakeholders.

7 Q. Relevant stakeholders, would that be
8 consumers?

9 A. That could include consumers.

10 Q. Who else could that include?

11 A. That could include employees. It could
12 include suppliers.

13 Q. What are some of these methods of
14 promotion of these integrated marketing
15 communications or public statements? Would you
16 include that in promotion?

17 A. Promotion would include advertising,
18 personal selling, sales promotion, public relations
19 and publicity.

20 Q. And public relations and publicity could
21 include press releases?

22 A. That could be included under public
23 relations and publicity, that's for sure.

24 Q. Could include appearances by company
25 representatives on news programs concerning the

1 product?

2 A. Public relations is broad, and that could
3 come under that umbrella.

4 Q. Okay. What are some other elements of
5 this integrated marketing communications?

6 A. In developing an integrated marketing
7 communications program or strategy, you combine
8 those four elements in such a way that you will
9 develop a campaign, a program, to fit the needs of a
10 particular group.

11 Q. So all of these elements work together?

12 A. That's correct.

13 Q. The images used in advertising work
14 together with the public relations statements, for
15 example, in a well-planned marketing program,
16 correct?

17 A. In an integrated marketing program, all
18 of the variables of the marketing mix, the
19 communications mix, promotional mix, work together.

20 Q. That's just good marketing, correct?

21 A. They should work together.

22 Q. They should work together. Okay. When
23 you mention sales promotion, can you parcel that out
24 for me a little bit. Give me an example of what a
25 sales promotion would be.

1 A. Sales promotion could include
2 exhibitions, trade shows, coupons. Generally, you
3 look at sales promotion as activities that support
4 and reinforce advertising and personal selling.

5 Q. Okay. Just so I'm clear. Sales
6 promotion is not included within the definition of
7 advertising, correct?

8 A. That is correct.

9 Q. Okay. Public relations, publicity, is
10 not included within your definition of advertising,
11 correct?

12 A. That is correct.

13 Q. What about merchandising, of putting your
14 logo on products? Where would that fit? Would you
15 consider that to be advertising?

16 A. That would be sales promotion.

17 Q. That would be sales promotion. Okay.
18 Sports sponsorships?

19 A. Sales promotion.

20 Q. Any type of event sponsorship, a music
21 festival?

22 A. Those would come under sales promotion.

23 Q. Sampling?

24 A. Sampling would also come under sales
25 promotion.

1 Q. What about promotional allowances?

2 A. Promotional allowances would come under
3 sales promotion as well.

4 Q. Okay. In-store point-of-purchase
5 displays?

6 A. That would also be sales promotion.

7 Q. Direct mail?

8 A. Direct mail would be advertising.

9 Q. What about endorsements and testimonials
10 by actors, athletes?

11 A. It would depend on how that's done. If
12 an individual is part of a commercial, that would be
13 advertising.

14 Q. Okay. What about product placement in a
15 movie, if Coke pays 20th Century Fox to have Tom
16 Hanks drink a Coca Cola in a scene?

17 A. To the best of my knowledge at this
18 point, I would put that under sales promotion.

19 Q. Coupons?

20 A. That would come under sales promotion.

21 Q. Okay. And, I assume, a retail value
22 added, a buy-one get-one-free promotion, that would
23 be a sales promotion?

24 A. That would come under sales promotion as
25 well.

1 Q. Okay. Let me make sure I have a handle
2 on what you mean, then, by advertising. We have
3 talked about direct mail can be advertising. We
4 have talked about an endorsement within an ad itself
5 would be advertising, obviously. Print media ads
6 are advertising, correct?

7 A. Advertising is defined primarily as any
8 non-personal paid form of communication with an
9 identified sponsor.

10 Q. Okay. And so, when I think of
11 advertising, I think of television commercials,
12 radio commercials, print media ads. That's the bulk
13 of what we are talking about with advertising,
14 correct?

15 A. Those three come under advertising.

16 Q. What other things besides print, radio
17 and television ads can you think of that come under
18 advertising? Obviously, there can be some others,
19 but just in general, what comes in your head, if
20 anything?

21 A. There are billboards. There are transit
22 ads and internet ads.

23 Q. Okay. Now, throughout your report, you
24 used the term advertising; and then I think at times
25 you also used the term promotion. I assume when

1 you've used those terms in your report, you have
2 been careful to use advertising only when you are
3 speaking of advertising as you define it here,
4 correct?

5 A. That is my understanding, yes.

6 Q. Dr. Williams, isn't it true that the vast
7 majority of the study of marketing takes place
8 within the companies and the marketing firms in the
9 business community? Is that correct?

10 A. Could you restate that, please, to make
11 sure that I understand it correctly?

12 Q. Okay. The vast majority of marketing
13 studies are done by persons within marketing
14 departments of businesses or by marketing firms as
15 opposed to academics, correct?

16 MR. DURHAM:

17 Object to form.

18 MR. SASSER:

19 Objection.

20 A. Marketing studies can be done by both
21 groups. There are active academics that do apply in
22 practical research and studies. And business firms
23 in their marketing research departments will also do
24 marketing research. So there will be research
25 taking place both in the academics arena and in the

1 practitioner arena.

2 MR. GRAY:

3 Q. How many students, roughly, graduate
4 annually from USM with degrees in marketing, sir?

5 A. That number certainly would vary.

6 Q. Just in general.

7 A. Let me just say on average, probably 100.

8 Q. Out of those 100 -- and you do teach
9 marketing classes at USM, correct?

10 A. Yes, I do. I teach marketing.

11 Q. Okay. And what is your current position
12 at USM?

13 A. I'm chair and professor of the Department
14 of Managing and Marketing, University of Southern
15 Mississippi.

16 Q. Okay. Are you generally familiar, then,
17 with the placement of USM marketing degree
18 graduates?

19 A. I have some familiarity.

20 Q. Okay. On average out of that 100, how
21 many of those USM marketing degree graduates will go
22 into academic positions?

23 A. Very, very few. I don't have a number.

24 Q. If you had ten that went into academic
25 positions in a given year, that would be a pretty

1 high number?

2 A. That would be a large number.

3 Q. I assume, and tell me if this assumption
4 is not correct, then, that the vast majority of that
5 100 or so marketing degree graduates a year go out
6 into the business world and take jobs doing
7 marketing work, correct?

8 A. Most of them will do marketing work, yes.

9 Q. Okay. And the phrase marketing work
10 obviously can be very broad, correct?

11 A. Yes.

12 Q. Okay. If one of your students were to
13 graduate with a marketing degree and go work with a
14 marketing firm, what kind of things would that young
15 student be doing, or that young marketer be doing,
16 in the early years of his or her career?

17 A. The majority of the students that
18 graduate would first enter a sales oriented career.

19 Q. Okay. Actually as a --

20 A. As a sales rep or a marketing rep.

21 Q. Sales rep or marketing rep. Okay. Out
22 of that 100 or so a year, how many on average would
23 go directly to positions where they would be doing
24 market research or analysis for companies or
25 marketing firms?

1 A. Very, very few.

2 Q. Very, very few. Would that number be at
3 least as high as the number that goes straight into
4 academic positions?

5 **MR. DURHAM:**

6 Object to form.

7 A. Could you restate that?

8 **MR. GRAY:**

9 Q. Out of this 100 or so graduates every
10 year, you said very few would go directly into
11 academics, correct?

12 A. Yes.

13 Q. And you said very few would go directly
14 into positions where they were doing market
15 research?

16 A. That is correct.

17 Q. The number of students that would go
18 directly into market research would be at least as
19 high, wouldn't it, as the number that would go
20 directly into academic positions?

21 **MR. DURHAM:**

22 Object to the form.

23 A. In a given year, very, very few students
24 in our program would go directly into marketing
25 research.

1 MR. GRAY:

2 Q. Okay. And it's hard to quantify either
3 way?

4 A. That would be very hard.

5 Q. Okay. Of those students that go into
6 sales oriented careers, do many of them ultimately
7 go into positions where they do market research?

8 A. Very few will go into marketing research.

9 Q. Okay. And very few will also go into
10 academic positions, correct?

11 A. Very few will go into an academic arena,
12 that's correct.

13 Q. Dr. Williams, if I want to determine
14 whether a marketing campaign will be favorably
15 received in a certain segment of the population,
16 what are the ways I can go about doing this?

17 A. Could you restate that please, and make
18 sure that I have this correct?

19 Q. Sure. If I have got a product I want to
20 sell, and I ask the people in my marketing
21 department how do I go about making sure this
22 product is going to be favorably received in the
23 community I want to sell it in, what are the types
24 of things that my marketing department will do?

25 MR. SASSER:

Object to form.

MR. GRAY:

Q. For example, would they conduct focus groups?

A. Before a particular marketing strategy is put together, marketing research is going to be conducted. Information is going to be collected.

Q. Okay. And in doing that marketing research, one of the things you would try and find out is whether or not any certain group of consumers is predisposed to buy this type of product, correct?

MR. SASSEN:

Object to form.

A. When you conduct market research, you're trying to get information on various characteristics of consumers. That information helps in terms of the development of a marketing strategy. That's really the only way that you can develop a sound marketing strategy.

MR. GRAY:

Q. And in developing a sound marketing strategy, don't you want to identify the consumers who you think are likely to buy your product?

A. In the development of that strategy, you will identify the likely buyers of a given product

1 or service.

2 Q. Okay. And how will you identify those
3 likely buyers?

4 A. You're going to do that through marketing
5 research.

6 Q. Okay. And what type of things -- you
7 would research demographic statistics in the
8 community?

9 A. Demographics would be one way of doing
10 that.

11 Q. Okay. What would another way be?

12 A. Another way would be to use
13 psychographics.

14 Q. Okay. What is psychographics?

15 A. Psychographics involves looking at
16 activities, interests and opinions of prospective
17 consumers. Basically, it's looking at lifestyles as
18 well.

19 Q. Okay. Well, when a marketer is doing
20 this analysis, you obviously can't go talk to every
21 single person in a community, correct?

22 A. For consumer products, you cannot. For
23 industrial products, you could talk to every single
24 buyer.

25 Q. Okay. Fair enough. I'll make sure I'm

1 clear.

2 For a consumer product, though, if you
3 wanted to do some market research in Jackson to find
4 out whether or not -- to develop a marketing
5 campaign, you couldn't talk to everybody in the City
6 of Jackson?

7 A. You probably would not talk to every
8 person in Jackson.

9 Q. It wouldn't be very efficient, would it?

10 A. Probably not.

11 Q. And it's really not necessary to talk to
12 everybody in the city to make generalizations about
13 what marketing campaigns would be well received in
14 the city; is that correct?

15 MR. SASSER:

16 Objection.

17 MR. DURHAM:

18 Objection.

19 A. Could you restate that, please?

20 MR. GRAY:

21 Q. If I wanted to develop a marketing
22 campaign for a consumer product in Jackson,
23 Mississippi, and I came to you and asked you to help
24 me do some research to develop that marketing
25 campaign, and I asked you, Dr. Williams, do you

1 think we need to go survey every one of the 300,000
2 people that live in the Jackson Metropolitan area in
3 order to sufficiently develop a marketing campaign,
4 do you think that's necessary, what would your
5 answer be?

6 A. In many cases, representative sampling is
7 going to serve the same basic purpose.

8 Q. Okay. And if the marketer does his or
9 her job correctly, usually the representative
10 sampling, it almost always will be accurate, won't
11 it, to provide the basis to develop a marketing
12 campaign?

13 MR. SASSER:

14 Objection.

15 MR. DURHAM:

16 Object to form.

17 A. The marketer would have to determine if
18 sampling is the best approach or not. It may not
19 fit all circumstances.

20 MR. GRAY:

21 Q. Okay. But for most consumer products?

22 A. A number of consumer products probably
23 would fit that, but maybe not all of them.

24 Q. And similarly, if you have got a
25 marketing campaign that's already ongoing and you

1 want to gauge consumer reaction to that marketing
2 campaign, and let's say, let's use the City of
3 Jackson again, you wouldn't need to go interview
4 everybody in the City of Jackson to determine
5 whether or not -- to determine the impact of that
6 campaign, would you, sir?

7 A. The marketer would decide which
8 approaches to use that best matches the situation.
9 So that would be a determination of the marketer and
10 the marketing staff how they would choose to go
11 about doing that.

12 Q. Would a marketer ever say, yes, we need
13 to go talk to all 300,000 people in the Jackson
14 Metropolitan area?

15 A. That's probably not a likely occurrence.

16 Q. Okay. Basically, that's really an
17 area -- that's a key area of expertise for the
18 marketer, isn't it, being able to take a smaller
19 sample of people from a community and make reliable
20 generalizations about the effects of marketing
21 campaigns on the general community?

22 MR. DURHAM:

23 Objection.

24 MR. SASSER:

25 Object to the form.

1 A. Marketers will collect information, and
2 that information is useful in the development of an
3 integrated marketing strategy.

4 **MR. GRAY:**

5 Q. Okay.

6 A. And different types of information might
7 be collected as we indicated. Demographic
8 information or psychographic information can be put
9 together to help people understand the nature of a
10 given market.

11 Q. Let me be a little more specific. If
12 there is a marketing campaign that's currently
13 running in the City of Jackson and you are asked,
14 Dr. Williams is asked, to gauge consumer reaction to
15 that marketing campaign, isn't it true that you
16 would gauge consumer reaction by collecting
17 information on a subset of the population of the
18 City of Jackson?

19 **MR. SASSER:**

20 Objection.

21 A. In putting together that particular study
22 effort, I would have to look at a few more details
23 in terms of the basic objectives of the strategy
24 initially. I would have to have some additional
25 information about the campaign.

1 MR. GRAY:

2 Q. Okay. Let's say R.J. Reynolds hired you
3 to gauge whether or not its marketing campaigns in
4 the central Mississippi area were effective. How
5 would you go about beginning your research on that?

6 A. In determining the effectiveness of a
7 given strategy, you first go back to the goals, what
8 were the goals, the original goals of the marketing
9 effort or the advertising campaign. And then, you
10 would make some measurement or some assessment based
11 on that. You would have to start with the initial
12 goals.

13 Q. Okay. And what would the goals of an
14 R.J. Reynolds' marketing campaign for Camel
15 cigarettes be?

16 MR. SASSER:

17 Objection.

18 A. I don't know all the details in terms of
19 that particular campaign, but different marketers
20 will have different goals. And if you identify
21 those goals, you are in a much better position to
22 design the study, the assessment effort to determine
23 whether or not those goals have been obtained.

24 MR. GRAY:

25 Q. So it's your testimony that if a private

1 or if a company comes to you like R.J. Reynolds and
2 says we want you to assess whether our Camel
3 marketing campaign is effective, you would ask
4 R.J. Reynolds what your goal is? You would ask the
5 person from R.J. Reynolds what's the goals of the
6 marketing campaign?

7 A. It's very important to know those goals
8 in terms of what they had in mind. What were the
9 expectations of the company. That's one of the
10 things you would have to start with. And from that
11 point, you would move forward.

12 Q. Maybe you think I'm asking a more
13 specific question. The goal of any marketing
14 campaign ultimately is to sell the product, correct?

15 A. Different marketing campaigns might have
16 different goals.

17 Q. I'm sorry.

18 A. But if you look at what marketing does,
19 it's designed to facilitate and to expedite the
20 exchange process. And that's certainly a key
21 element of what marketing people do.

22 Q. Okay. So you're not sure if the goal of
23 R.J. Reynolds' Camel marketing is to sell Camel
24 cigarettes or not?

25 A. A particular ad -- are you looking at an

1 entire marketing effort or a particular --

2 Q. Total effort.

3 A. -- Camel ad?

4 Q. Total effort.

5 A. If you look at what marketing can do, and
6 if you look at what advertising can do as part of
7 marketing, that role is going to vary depending on
8 the type of product and where that product is in the
9 product life cycle. So a response to that is going
10 to depend on where the product is in that cycle and
11 the characteristics of the product.

12 Q. If the goal is not to sell the product,
13 what other goal could there be for a marketing
14 campaign?

15 A. Companies have different goals. You
16 might have a communications oriented goal to
17 increase recognition or awareness. You might want
18 to increase market share. There are different goals
19 that companies might have. You might want to
20 enhance the image of the firm.

21 Q. Wouldn't enhancing the image, for
22 example, of R.J. Reynolds -- scratch that.

23 Other than to sell R.J. Reynolds
24 cigarettes, why would R.J. Reynolds want to enhance
25 its image?

1 A. There is certainly going to be a
2 connection between image enhancement and increasing
3 sales and increasing market share.

4 Q. Can you think of any other reason
5 R.J. Reynolds would spend money to enhance its image
6 other than to sell more cigarettes -- other than to
7 sell more R.J. Reynolds' cigarettes? I'll make it
8 easy for you.

9 A. Companies certainly want to be seen in a
10 positive light, and they certainly want to develop
11 products to move their image along as well as to
12 grow and to survive over time. And marketing is an
13 important tool in the process of companies growing.

14 Q. To grow and survive --

15 A. Those are just two very broad overall
16 organizational goals.

17 Q. I'm still not sure I'm clear. Your
18 testimony is a company will spend money to enhance
19 its image for reasons other than to sell its
20 product?

21 **MR. SASSER:**

22 Objection.

23 A. Companies have different goals.
24 Companies would like to enhance their image. They
25 would like to increase market share. They would

1 like to grow.

2 **MR. GRAY:**

3 Q. And they grow by selling their product,
4 correct?

5 A. They would grow in different ways.
6 Companies would like to sell products.

7 Q. Other than selling products, is there any
8 way for a company to grow? Let me back up. For a
9 company that's in the business of selling products,
10 can it grow by any means other than selling the
11 product?

12 **MR. CASSER:**

13 Objection.

14 A. Companies have different goals, and they
15 will pursue those goals in different ways.
16 Companies would like to increase market share. They
17 would like to grow. And there are different ways of
18 doing that.

19 **MR. GRAY:**

20 Q. Okay. You also said that communications
21 may be oriented in order to increase awareness, and
22 I may have misstated that. Can you expand on what
23 you meant by awareness?

24 A. Could you restate that, sir?

25 Q. Earlier, we were talking about

1 communications a company may make as part of a total
2 marketing mix. And in addition to enhancing its
3 image, I think you said one of the other goals of
4 these communications is to increase consumer
5 awareness. Did I misstate that?

6 A. The marketing communications program of a
7 particular company might have awareness as part of
8 the objectives that they have listed.

9 Q. Awareness of the particular brand?

10 A. It could be an awareness of the brand, an
11 awareness of new products that are being produced by
12 the organization. So awareness and the type of
13 awareness is going to vary depending on the company,
14 where they are and what they are doing with their
15 marketing strategy.

16 Q. It can be awareness of the product
17 itself, also, correct, not just the brand?

18 A. Brands that are in the maturity stages of
19 life cycle, you are very interested in the awareness
20 of that particular brand because you're assuming
21 some level of awareness, obviously, of the product
22 if it's in the maturity stage of the life cycle.

23 Q. I'll tell you what. We are starting to
24 get into your report a little bit. So let me pull
25 that out. You have got a copy of your report,

1 correct?

2 A. I have.

3 Q. Did you draft this report, sir?

4 A. Yes.

5 Q. I assume the drafting of this report --
6 well, when did the drafting of this report begin?

7 A. The drafting of this report began -- I
8 don't have a specific date. Let me just say,
9 probably at some point last year.

10 Q. Did the attorneys for the tobacco
11 companies review any drafts?

12 A. I was aware of what I was looking for in
13 terms of I was looking at the research and the
14 literature in marketing, and when I put the report
15 together, it was shared with the attorneys after I
16 had prepared the report.

17 Q. You say you were aware of what you were
18 looking for. What were you asked to do when you
19 were first -- let me scratch that.

20 You were first contacted by attorneys,
21 correct?

22 A. I was first contacted by attorneys, yes.

23 Q. Do you recall if you were contacted for
24 purposes of testimony in this case as opposed to the
25 Scott case? Do you remember either way?

1 A. It is my recollection at this point that
2 it was for the *Thomas* case.

3 Q. Okay. And what were you asked to do?

4 A. I was, basically, asked to look at the
5 literature to review the social science research as
6 it relates to my areas of expertise, advertising,
7 consumer behavior and to look at the application of
8 those concepts as they apply to the issues in the
9 tobacco case.

10 Q. Before you started this research, did you
11 have any idea as to what position the tobacco
12 companies took on the issues that are discussed in
13 your report?

14 A. Could you repeat that?

15 Q. When you started doing your research,
16 were you aware of what positions the tobacco
17 companies take in litigation on the issues addressed
18 in your report?

19 **MR. SASSER:**

20 Objection.

21 A. I did not know -- before working and
22 doing research in this area, I had not done research
23 in the tobacco area. I had done research in
24 marketing as it relates to a number of different
25 industries but not this particular industry.

1 MR. GRAY:

2 Q. Okay. Does this report accurately
3 reflect the opinions you intend to discuss in this
4 case?

5 A. To the best of my knowledge and
6 recollection at this point, yes.

7 Q. Okay. I believe this report was
8 submitted at some time last summer. To the best of
9 your knowledge, have you had any changes in your
10 opinions since that time?

11 A. My opinions have not changed. My
12 research is ongoing, but my opinions today have not
13 changed.

14 Q. Okay. Do you intend to do any further
15 research prior to the trial of this matter on the
16 topics discussed in your report?

17 A. As an academic, my research is ongoing,
18 so I will continue my research in this area.

19 Q. Well, but prior to your being retained in
20 this case, you had never done any research in the
21 area of tobacco, correct?

22 A. I have not done research related to this
23 industry, but I have done research in marketing as
24 it relates to other industries, the application of
25 the same concepts.

1 Q. Have you ever done research about whether
2 or not advertising or marketing creates primary
3 demand?

4 A. As part of my natural work in marketing,
5 I'm familiar with that. But as far as collecting
6 data to determine that, no. But I am very familiar
7 with that just by having familiarity with the
8 marketing field.

9 Q. Sure. Okay. So other than your work
10 with the tobacco companies, you have never collected
11 data or done research, though, on questions of
12 primary demand, correct?

13 MR. DURHAM:

14 Object to form.

15 MR. SASSER:

16 Objection.

17 A. As a normal course of teaching marketing
18 for the past 20 plus years, the concepts as far as
19 primary demand are very, very well established. So
20 there was no particular need to engage in a research
21 effort to look at that aspect of primary demand.

22 MR. GRAY:

23 Q. Okay. And I guess that's what I'm
24 getting to is what level of research do you think
25 you may engage in between now and the trial of this

1 matter in June on issues that are discussed in the
2 report. For example, do you intend to continue to
3 review literature related to primary demand?

4 A. I intend to continue reviewing the
5 literature in all of the relevant areas of
6 marketing, consumer behavior and advertising.

7 Q. Okay. So you will not review the
8 literature in areas addressed in this report to any
9 greater extent than you generally review all
10 literature related to marketing between now and
11 trial, correct?

12 **MR. SASSER:**

13 Objection.

14 A. I will continue to review the literature
15 as it relates to the concepts and areas presented in
16 this report.

17 (Exhibit 3 was marked.)

18 **MR. GRAY:**

19 Q. Okay. Fair enough. I have marked as
20 Exhibit 3 the vita that was delivered along with
21 your disclosure this summer. If you could take a
22 second to review it, please, sir. It's fairly
23 lengthy.

24 But to the best of your knowledge, is
25 that a current vita?

1 A. To the best of my knowledge, this is a
2 current vita as the date given here.

3 Q. Okay. What updates would you have from
4 the date of this vita which is June 2000? Any new
5 publications?

6 A. I would have some presentations that were
7 not included here.

8 Q. To the best of your recollection, can you
9 tell me about some of those presentations?

10 A. Those presentations would have related to
11 supply chain management.

12 Q. Okay. Any other topics?

13 A. From the time period of this to now, no.

14 Q. Okay. Is there anything else in this
15 vita that should be updated from the date of
16 June 2000?

17 A. As I look at it at this point, the answer
18 is no.

19 (Exhibit 4 was marked.)

20 Q. Okay. Marked as Exhibit 4, actually a
21 letter dated March 23rd from Womble, Carlyle with a
22 Thomas reliance list attached. Could you take a
23 look at that, sir? You have reviewed that list
24 before, correct, sir?

25 A. That is correct. I have reviewed this

1 list.

2 Q. Your report references an Exhibit 3 on
3 Page 4 at the top. It says, examples of the
4 research evidence are listed among the references in
5 Exhibit 3. And I know this report was submitted
6 several months ago. It appears to me the original
7 Exhibit 3 to the report is the same list as that
8 reliance list that I have marked as Exhibit 4 to
9 this deposition.

10 Do you know if that's correct?

11 A. There are some differences in terms of
12 referenced Exhibit 3.

13 Q. Okay. Have you reviewed additional
14 materials that you would describe as reliance
15 materials since the submission of your report?

16 A. The reliance materials that you have on
17 this list represent the sources that I would like to
18 rely upon for the purposes of the opinions stated in
19 the report.

20 Q. Okay. And is that reliance list complete
21 to the best of your knowledge?

22 A. My research is ongoing, and I continue to
23 review a number of things in the literature; but to
24 date, these references form the bases for many of my
25 opinions in addition to just my knowledge of

1 marketing and my understanding of marketing
2 strategy. So I'm not basing everything on just
3 these articles. You have to think of my 20-plus
4 years of just knowing the marketing discipline in
5 consumer behavior and advertising as well.

6 Q. Okay. Fair enough. The materials on
7 that list, sir, were -- tell me about your process
8 of gathering those materials. Were they provided to
9 you by lawyers for the tobacco companies or by the
10 tobacco companies?

11 A. No. These materials were acquired
12 through research on my part and also from the
13 assistance of some research assistants that I
14 employed to help get some of the materials as far as
15 copying and the lot.

16 Q. These would be research assistants,
17 students at USM or graduates students, correct?

18 A. These were people that were independently
19 employed for the purpose of collecting this
20 information by me.

21 Q. Do you know if the people you've
22 independently employed had ever worked for experts
23 for tobacco companies before?

24 A. They had not worked for experts before.

25 Q. Do you know if they had ever worked for

1 the tobacco companies or any lawyers for the tobacco
2 companies before, to your knowledge?

3 A. To my knowledge, they had not worked for
4 any.

5 Q. These are people that you had a
6 relationship with that you separately hired?

7 A. That is correct.

8 Q. Okay. Were you provided any materials by
9 the tobacco companies or their lawyers in connection
10 with the preparation of your report?

11 A. I was provided the depositions of Ezell
12 Thomas; the depositions of some of the individual
13 plaintiffs.

14 Q. Okay. While we are there, do you
15 understand the position of Owens Corning in this
16 litigation?

17 A. I do understand that, but if you would
18 care to explain it.

19 Q. Tell me your understanding of what Owens
20 Corning's position is in this case.

21 A. It is my understanding to this point that
22 the plaintiffs that were concerned that had -- the
23 plaintiffs that were suing the tobacco companies
24 were also suing Owens Corning for asbestos-related
25 concerns. And at this point, Owens Corning is suing

1 the tobacco companies to recover the damages.

2 Again, I don't know the details, but
3 that's about what I understand to date. But if you
4 would like to give me additional details that might
5 help me in the case.

6 Q. No. Okay. So you have been provided
7 depositions of individual plaintiffs in this case.
8 So, I assume, you may testify both in Owens
9 Corning's trial and in the trial of individual
10 plaintiffs cases?

11 A. I will respond in a way that I'm asked.
12 At this point, I do not know.

13 Q. You may. Other than individual plaintiff
14 depositions, have you reviewed any other depositions
15 taken in this case?

16 A. I have reviewed some of the depositions
17 of some of the experts of the plaintiffs.

18 Q. Okay. Do you recall which experts?

19 A. Arnette comes to mind. And I think I
20 have reviewed Glover and Marshall.

21 Q. Probably be their expert report?

22 A. And at this point, that's all that I can
23 think of, sir.

24 Q. Do you recall --

25 MR. SASSER:

1 Let me just state for the record, there
2 may be some misunderstanding between depositions and
3 expert reports; and there also may be some overlap
4 in his response between Scott and the experts in
5 Scott and the experts in this case.

6 MR. GRAY:

7 Sure.

8 Q. What about Dean Krugman, do you recall
9 reading his report or his deposition?

10 A. I have reviewed Dean Krugman, yes, I
11 have.

12 Q. Are you familiar with Dr. Joycelyn
13 Elders?

14 A. Yes.

15 Q. Have you read her report submitted in
16 this?

17 A. I have read her report.

18 Q. Are you familiar with Dr. Louis Sullivan?

19 A. Yes.

20 Q. Have you read Dr. Sullivan's report?

21 A. I have read his report.

22 Q. Dr. Sullivan and Dr. Elders and Dean
23 Krugman have all been deposed. You may have read
24 their depositions as well, correct?

25 A. Sir, at this point, I'm not sure what I

1 have read from those individuals, but I have gone
2 through some material, and I do remember their
3 names.

4 Q. Okay. Do you recall any other expert
5 reports or depositions that you may have read?

6 A. As I sit here today, I cannot think of
7 additional names.

8 Q. Okay. What about tobacco company
9 experts? Have you read the report of Dr. Jerome
10 Williams?

11 A. I have not.

12 Q. Okay. What about the report of Carolyn
13 Jones?

14 A. I have not.

15 Q. Are you familiar with the name Caroline
16 Jones at all?

17 A. I am not.

18 Q. What about Jerome Williams?

19 A. I'm familiar with that name.

20 Q. Do you know Dr. Williams?

21 A. I have met him once.

22 Q. And that was in connection with an
23 academic --

24 A. That was in connection with an academic
25 meeting.

1 Q. You have never discussed your opinions in
2 this case with Dr. Jerome Williams, have you?

3 A. No.

4 Q. Sir, have you reviewed any internal
5 tobacco company documents?

6 A. Yes, I have.

7 Q. When were those documents provided?

8 A. I reviewed tobacco company documents at
9 my request last year.

10 Q. What prompted you to ask to review
11 documents; do you recall?

12 A. I wanted to review the documents that the
13 plaintiffs' experts refer to. I thought it would be
14 very helpful and useful as I developed my thought
15 processes regarding this to look at the industry or
16 company documents that the experts or the plaintiffs
17 refer to.

18 Q. So did your review of those documents
19 have an influence on your opinions in this case?

20 A. I reviewed a number of documents, and my
21 opinions still stand as they are presented here.

22 Q. So your review of those internal tobacco
23 documents didn't change your opinions at all?

24 A. They did not change my opinions at all.

25 Q. And they did not affect your opinions at

1 all?

2 A. They did not affect my opinions, but I
3 wanted to review them for thoroughness and
4 comprehensiveness to make sure that I had covered
5 all of the areas to come to the conclusion that I
6 needed to come to as far as understanding what was
7 happening.

8 Q. And I assume, then, you asked to review
9 and, to your knowledge, you did review all of the
10 documents cited in the expert reports of Krugman,
11 Glover, Marshall, Sullivan and Elders?

12 A. I reviewed a number of documents,
13 marketing documents cited by those individuals. I
14 won't tell you all, but a very, very large number.

15 Q. Okay. For example, you may not have read
16 all of the health-related documents cited in
17 Dr. Elders' report?

18 A. I would have gone through the
19 marketing-related documents.

20 **MR. GRAY:**

21 Okay. I tell you what. Let's stop there
22 and take a quick break, if that's okay.

23 (A short break was taken.)

24 **MR. GRAY:**

25 Q. Dr. Williams, earlier we were talking

1 about whether or not you had done any research
2 regarding cigarette advertising or marketing,
3 correct?

4 A. You did ask me that question.

5 Q. And I think your response was, prior to
6 this case you had never done any research in the
7 area of tobacco?

8 A. I have not done any research in the area
9 of tobacco, but I have done research in terms of
10 marketing as it relates to a lot of different
11 industries, and this one would be no different from
12 other industries.

13 Q. Okay. Had you ever read any of the
14 literature specific to tobacco marketing prior to
15 your retention in this case?

16 A. Sir, as part of my job, I do a lot of
17 reading and marketing in general. The same basic
18 marketing principles and concepts will apply to each
19 industry.

20 Q. Okay. For example, have you ever read
21 any of the Surgeon General's reports to the extent
22 they pertain to marketing?

23 A. I have read some of those, yes, I have.

24 Q. Was that prior to your retention in this
25 case or was that as part of your review of documents

1 cited in these expert reports?

2 A. That occurred as part of my review of the
3 documents.

4 Q. Prior to your retention in this case, had
5 you ever written a report or an article in any
6 published issue discussing primary demand?

7 A. As part of my research in marketing, I've
8 written articles dealing with the development of
9 marketing strategies. And the development of
10 marketing strategies will cross both primary demand
11 and selective demand.

12 Q. Had you ever done any research as to
13 whether marketing in a particular industry creates
14 primary demand, ever published any papers on that
15 topic?

16 A. I have published papers that deal with
17 the development of marketing strategy in general and
18 the application of those concepts to particular
19 industries and groups. And as part of doing papers
20 and doing research, you have an understanding of the
21 demand structure of the marketplace.

22 Q. But you have never published a paper that
23 reached a conclusion as to whether marketing in a
24 particular industry creates primary demand, correct?

25 A. I did not have primary demand as a

1 specific topic of investigation, but as part of
2 looking at the overall marketing strategy, that was
3 certainly included.

4 Q. Would the same be true, for example, with
5 respect to the concept of product life cycle? You
6 have never specifically analyzed a specific product
7 in the context of product life cycle in any
8 published literature?

9 A. As part of my research in general in
10 marketing, I do look at product life cycle
11 information. Because where a product is in the life
12 cycle is an important determinate of the strategy
13 that you pursue.

14 Q. Okay. Have you ever published any paper
15 that discussed a particular product and its stage in
16 the product life cycle?

17 A. I have looked at and developed papers
18 that dealt with marketing strategies in general, and
19 the application of a number of concepts, including
20 product life cycle, across different groups of
21 industries, not just a particular industry. The
22 concept of product life cycle, that particular
23 concept, will cross industry groups. So the same
24 basic ideas are important.

25 Q. Okay. Your vitae lists numerous articles

1 that you published. Can you point to any articles
2 listed on your vita that would have specific
3 discussions of product life cycle?

4 A. Sir, I would have to go back and look at
5 the details on some of them.

6 Q. Well, off the top of your head,
7 obviously, if there is one that discusses it, it's
8 in there. But just is there any that you can point
9 to off the top of your head that would have
10 discussed it?

11 A. At this point, again, to the best of my
12 recollection, I would say the article that deals
13 with marketing processes and consumer need
14 fulfilled, that should be on Page 4, the third one
15 down. But that's -- again, I would have to look at
16 these to see.

17 Q. Okay. Is there another one that may, or
18 may be likely to, discuss product life cycle?

19 A. A possibility -- and again, I don't
20 remember exactly at this point -- at the bottom of
21 Page 6 an article in the proceedings of the Academy
22 of Marketing Science. And there may be others, but
23 at this point, I don't recollect.

24 Q. Okay. And that would be Analyzing Female
25 Consumers' Adaptive Shopping Behavior Using

1 Employment Status and Education Level Segmentation
2 Variables?

3 A. That's correct.

4 Q. That may discuss product life cycle?

5 A. That's a possibility, but I'm not 100
6 percent sure at this point.

7 Q. Any others?

8 A. At this point, I am not sure. I don't
9 think so, but I am not 100 percent positive.

10 Q. Would the same be true for discussions of
11 mature products, then?

12 **MR. DURHAM:**

13 Object to the form.

14 **MR. SASSER:**

15 Objection.

16 **MR. GRAF:**

17 Q. My understanding would be that if you
18 were discussing a product and describing it as a
19 mature product, by definition, you would be
20 discussing the product life cycle. Is that
21 understanding correct?

22 A. The maturity stage is one of the stages
23 in the product life cycle.

24 Q. So the same articles you have cited that
25 may have discussions of product life cycle are

1 probably the only articles on your vita that may
2 discuss products being in the maturity stage,
3 correct?

4 A. Those articles possibly have some content
5 in terms of maturity stage.

6 Q. Would any others possibly have some of
7 that content?

8 A. At this point as we sit here, I do not
9 know.

10 Q. Okay. Dr. Williams, would you agree or
11 disagree that smoking causes 430,000 deaths annually
12 in the United States?

13 **MR. SASSER:**

14 Objection.

15 A. Sir, I do not know about any of the
16 numbers in terms of smoking and the like.

17 **MR. GRAY:**

18 Q. If I told you that that number, 430,000
19 annual deaths in the United States, was cited in the
20 report of Dr. Joycelyn Elders, would that surprise
21 you?

22 **MR. SASSER:**

23 Objection.

24 **MR. JONES:**

25 Which report?

1 MR. GRAY:

2 The report submitted in this case that I
3 believe Dr. Williams read.

4 A. I reviewed a lot of material. That
5 specific number from that specific report, I do not
6 remember.

7 MR. GRAY:

8 Q. You don't dispute that figure, though?

9 MR. SASSER:

10 Objection.

11 A. I do not remember it, sir.

12 (Exhibit 5 was marked.)

13 MR. GRAY:

14 Q. Marked as Exhibit 5 is the report of
15 Dr. Joycelyn Elders submitted in this case. Does
16 that appear to be the report you have previously
17 read, sir?

18 A. Sir, at this point, I do not remember
19 the -- if this is the exact report or not.

20 Q. Okay. On Page 3 at the top, there is a
21 sentence which reads, In 1988 smoking was
22 responsible for more than one of every five deaths
23 in the U.S. which accounted for approximately
24 434,000 excess deaths each year. Smoking remains
25 the single most important preventable cause of death

1 in our society.

2 Do you have any reason to doubt Dr.
3 Elders' statement there?

4 **MR. SASSER:**

5 Objection.

6 A. Sir, I'm not a health expert, and
7 Dr. Elders is a health expert. I'm an expert in
8 marketing and advertising.

9 **MR. GRAY:**

10 Q. So you don't think marketers should be
11 concerned about the health effects of their
12 products?

13 **MR. DURHAM:**

14 Objection.

15 **MR. SASSER:**

16 Objection.

17 **MR. GRAY:**

18 Q. Do you think marketers should be
19 concerned about the health affects of their
20 products, sir?

21 A. Marketers should be concerned about a
22 wide range of variables related to their particular
23 brands.

24 Q. Okay. Should they be concerned about
25 whether or not their product kills people?

1 MR. SASSER:

2 Objection to the form.

3 A. Could you restate that, sir?

4 MR. GRAY:

5 Q. Should a marketer of a product be
6 concerned about whether or not that product will
7 kill the person who purchases it and uses it?

8 MR. SASSER:

9 Objection.

10 MR. JONES:

11 Would that include asbestos-containing
12 products?

13 MR. GRAY:

14 I would object to Mr. Jones' statements.

15 MR. JONES:

16 That was an inquiry.

17 MR. DURHAM:

18 I'm objecting to the form.

19 A. Marketers should be concerned about a
20 wide range of variables that impact their brands.

21 MR. GRAY:

22 Q. Would one of those variables be the
23 health effects of that product on the consumers who
24 purchase it and use it?

25 A. As marketing people go through the

1 product development process and produce particular
2 brands, those brands that are placed in the
3 marketplace should be product brands that are used
4 by particular market segments to satisfy
5 expectations. And in putting those brands in the
6 marketplace, a number of variables are going to be
7 considered, and marketers would want to put their
8 very best brands, their very best products, in front
9 of the marketplace.

10 That's what any marketer would do if we
11 are talking about tobacco or if we are talking about
12 soap or toothpaste. You put forth the best brand,
13 or the best brand names, that you have.

14 Q. So irrespective of how many people the
15 products kills, as long as the marketer feels like
16 he is putting forth the best brand the marketer can
17 put out, it really doesn't matter what the health
18 effects are?

19 **MR. DURHAM:**

20 Object to the form of the question.

21 **MR. SASSER:**

22 Objection.

23 A. Marketers are interested in a wide range
24 of variables as they produce certain brands for the
25 marketplace. And they are very interested in how

1 the brands will be received in the marketplace.
2 They are very interested in the response of the
3 consumers of those brands. So there are a wide
4 range of variables that marketers have some interest
5 in.

6 **MR. GRAY:**

7 Q. As a professor of marketing, do you
8 believe that a marketer should be concerned about
9 the health effects of the products that that person
10 markets?

11 **MR. SASSER:**

12 Objection.

13 **MR. GRAY:**

14 Q. Do you have an opinion either way?

15 A. It is very important for marketers to
16 produce brands for the marketplace that will satisfy
17 the expectations of those in the marketplace and to
18 consider all variables associated with producing a
19 brand for the marketplace. There may be any number
20 of variables that marketing people consider. Those
21 variables could be social or political because we
22 all make -- we make decisions in marketing based on
23 a lot of different factors.

24 Q. Is one of those factors the health
25 effects of the product?

1 A. The variables that are in the external
2 environment that affect how we make decisions with
3 respect to particular brands can vary depending on
4 the nature of that brand or the nature of that
5 product.

6 Q. Okay. Well, let's talk about cigarettes.
7 Do you believe that marketers of
8 cigarettes should be concerned about the health
9 effects of their product?

10 **MR. SASSER:**

11 Objection.

12 A. Marketers should be concerned with a wide
13 range of variables associated with all of their
14 brands.

15 **MR. GRAY:**

16 Q. Are health effects of the product one of
17 those variables?

18 A. Again, if you look at what marketing
19 people do and why they do it, it's important to
20 consider an entire range of factors and variables in
21 making those decisions. And that would be the case
22 regardless of the industry and regardless of the
23 particular product or service.

24 Q. So in your professional opinion, when
25 R.J. Reynolds sells cigarettes, it should not be

1 concerned about the health effects of that product;
2 is that correct?

3 **MR. SASSER:**

4 Objection. Mischaracterizes his
5 testimony.

6 A. Could you restate that, sir?

7 **MR. GRAY:**

8 Q. Okay. In your opinion as an expert in
9 marketing, it's your opinion that R.J. Reynolds
10 should not be concerned about the health effects of
11 its products?

12 **MR. SASSER:**

13 Objection.

14 Q. Correct.

15 **MR. SASSER:**

16 Objection.

17 A. It is my opinion that marketers in
18 general, and marketers at R.J. Reynolds, should be
19 concerned about a very wide range of variables in
20 making a decision as to whether or not to introduce
21 a particular brand to the marketplace.

22 **MR. GRAY:**

23 Q. Are the health effects of the product one
24 of those variables?

25 A. Any number of variables could be part of

1 that mix, sir.

2 Q. I understand. I'm just looking for a yes
3 or no answer, and I'm going to ask this until
4 tomorrow if I have to.

5 Are the health effects of the product one
6 of those variables?

7 **MR. SASSER:**

8 Objection.

9 A. I'm not an expert of the health area, but
10 I do know as marketers make decisions, marketing
11 people will look at a number of factors, and the
12 factors that they consider will be dependent upon a
13 lot of different things. The factors that they
14 consider in making the decision whether or not to
15 introduce a brand to a particular market segment,
16 those decisions are going to be based on a lot of
17 different variables.

18 And those marketers at that time will
19 determine what those variables are and the relative
20 importance of those variables in the decision making
21 process.

22 **MR. GRAY:**

23 Q. So you have no opinion as to whether or
24 not a tobacco company should or should not
25 specifically consider the health effects of its

1 products when it markets those products?

2 MR. SASSER:

3 Objection.

4 A. The tobacco companies, just as other
5 consumer products companies, should consider a wide
6 range of variables in making a decision about
7 introducing a product, in making a decision about
8 how to market that product just at the producer of
9 toothpaste.

10 MR. GRAY:

11 Q. Do you ever teach courses in marketing
12 ethics?

13 A. I have taught a number of chapters on
14 marketing ethics over the years. I have never
15 taught one entire course, but I teach ethics every
16 single semester as an integral part of every
17 marketing course.

18 Q. What are some of the basic ethical duties
19 involved in marketing?

20 A. With respect to the product, with respect
21 to promotion and other areas, companies are expected
22 to behave in an ethical fashion. They are expected
23 to behave in a fashion that is responsible. So
24 generally, the discussions in marketing ethics would
25 revolve around the development of a marketing

1 strategy and looking at the product, promotion,
2 distribution, and those kinds of issues as they
3 relate to the entire strategy development process.

4 Q. Let's hone in on promotion. Would making
5 truthful statements be a part of -- making truthful
6 statements about the product, would that be a part
7 of a marketer's ethical duty?

8 A. Ads should be truthful.

9 Q. What about press releases?

10 A. Companies and organizations should tell
11 the truth.

12 Q. They should tell the truth whether it's
13 in an ad or a press release, correct?

14 A. The truth is the truth.

15 Q. It is. Should a company that issues a
16 press release that has information about its
17 product, does it have an ethical duty for that press
18 release to be truthful?

19 **MR. SASSER:**

20 Objection.

21 A. The truth should be told with respect to
22 the product, with respect to the marketing strategy.

23 **MR. GRAY:**

24 Q. And the truth should be told with respect
25 to the health effects of the product, correct?

1 A. The truth should be told in terms of
2 aspects of the marketing strategy, aspects of the
3 product. The truth is important. It should be an
4 integral part of the whole process.

5 Q. Are the health effects that a product may
6 have on a user, is that one aspect of the product
7 about which the truth should be told?

8 A. There are warnings on tobacco products,
9 and that warning says something about the health
10 concerns associated with consuming that product. So
11 if you're referring to something such as that
12 warning, the warning is there to provide information
13 to inform prospective consumers of the dangers or
14 the possible dangers of that particular product.

15 Q. Okay. Are you aware of when those
16 warnings first went on cigarette packages?

17 A. As I sit here today, the date that comes
18 to mind is 1964, but I'm not 100 percent certain.

19 Q. Okay. Fair enough. Okay. So we have
20 covered the package itself. Shouldn't have lies on
21 it, correct?

22 A. The truth --

23 MR. DURHAM:

24 Object to the form.

25 MR. SASSER:

1 Objection.

2 **MR. GRAY:**

3 Q. Should there be lies on a cigarette
4 package? Should the seller of the cigarettes put a
5 lie on the package?

6 **MR. SASSER:**

7 Objection.

8 A. Marketers of all products and all
9 services should have the truth as a cornerstone of
10 what they do.

11 **MR. GRAY:**

12 Q. Fair enough. And that covers all aspects
13 of what they do, issuing press releases, executives
14 appearing on television programs making statements,
15 correct?

16 **MR. DURHAM:**

17 Object to the form.

18 **MR. SASSER:**

19 Objection.

20 A. Could you give me one specific question
21 and let me respond once more?

22 **MR. GRAY:**

23 Q. Sure. I have got someone bringing some
24 documents here, but for now, we can work out of this
25 report. I will mark as Exhibit 6 the report of Dr.

1 Glover and Dr. Marshall.

2 (Exhibit 6 was marked.)

3 **MR. SASSER:**

4 Can I get a copy of that, please?

5 **MR. GRAY:**

6 Sure.

7 Q. Does that look familiar to you, sir? I
8 know you have already seen a lot of documents.

9 A. It looks familiar at this point.

10 Q. Fair enough. Let's go to Page 18. Do
11 you see the quote there in the middle of the page,
12 the block quote, sir?

13 A. I do see that quote.

14 Q. Okay. Just above that, two or three
15 lines up, is the name of that document. There is a
16 sentence that reads, In 1953, an R.J. Reynolds'
17 scientist, Dr. Claude Teague, wrote a document
18 entitled, *Survey of Cancer Research with Emphasis*
19 *upon Possible Carcinogens from Tobacco*. And then
20 there's a footnote, Footnote 40, which gives the
21 date of the document as February 2nd, 1953.

22 The underlined sentence in this report
23 says, Studies of clinical data tend to confirm the
24 relationship between heavy and prolonged smoking and
25 incidence of cancer of the lung. Do you recall

1 whether or not you read that document?

2 A. Sir, I read a number of documents. I do
3 not recall that particular one as I sit here today.

4 Q. Now, let's go to Page 10. The first
5 bullet point quote there, In 1954, the TIRC
6 published and distributed over 200,000 copies of a
7 white paper entitled *A Scientific Perspective on the*
8 *Cigarette Controversy* which contained the statement:
9 There is no proof whatsoever that smoking causes
10 pulmonary disease. Are you familiar with the TIRC,
11 sir?

12 A. I have heard of the TIRC, and I have
13 vague familiarity with that group.

14 Q. Okay. Are you aware or do you know
15 whether or not R.J. Reynolds was one of the
16 companies which funded the TIRC and was a member of
17 that group of tobacco companies that formed it?

18 A. I am not 100 percent sure.

19 Q. If on Page 18 we see where an
20 R.J. Reynolds scientist says that studies of
21 clinical data tend to confirm the relationship
22 between heavy and prolonged smoking and the
23 incidence of cancer, and then a year later we see a
24 trade group issue a public statement that says there
25 is no proof whatsoever that smoking causes pulmonary

1 disease, is that responsible marketing for
2 R.J. Reynolds to put that statement out in 1954
3 when it internally acknowledged otherwise in 1953,
4 sir?

5 **MR. SASSER:**

6 Objection.

7 A. Sir, I'm not a health care expert and not
8 a science expert. So I don't know in terms of these
9 two pieces of information.

10 **MR. GRAY:**

11 Q. Okay. Well, let's do it this way: Let's
12 say you're working for a company. And as part of
13 your marketing program, you are going to issue press
14 releases about the safety of your product, and one
15 of your own scientists has told you that this
16 product is dangerous, it causes lung cancer, do you
17 think it is ethical or appropriate for you, someone
18 in a marketing department, to issue a press release
19 that says this product is safe, it does not cause
20 lung cancer?

21 **MR. SASSER:**

22 Objection to the form.

23 **MR. GRAY:**

24 Q. Your personal opinion. Would you do
25 that, sir?

1 **MR. SASSER:**

2 Objection.

3 A. Could you restate that for my
4 understanding, please?

5 **MR. GRAY:**

6 Q. If you work for a company that sells a
7 product and one of the scientists in your company
8 has told you that he has determined that the product
9 is dangerous, that it causes cancer, and you're in
10 the marketing department and you were told to issue
11 a press release that says the product is safe, would
12 you issue such a press release?

13 **MR. SASSER:**

14 Objection.

15 **MR. GRAY:**

16 Q. Do you believe you would have an ethical
17 duty to issue or not issue the press release? Is
18 there a marketing ethics question there at all?

19 **MR. SASSER:**

20 Objection.

21 A. Sir, I would have to look at a number of
22 questions. You would have to look at the available
23 scientific evidence, the conclusiveness of that
24 evidence. Are we looking at just one scientist?
25 There are a lot of questions that you would have to

1 ask and have answered to respond.

2 **MR. GRAY:**

3 Q. Let's say this was the only scientist who
4 had reviewed the literature, the only scientist in
5 your company and he said -- he concluded that your
6 product was dangerous and caused cancer, is it
7 ethical for the marketing department of your company
8 to issue a public statement that says the product is
9 safe?

10 **MR. SASSER:**

11 Let me object to the form and just state,
12 for the record that, Tim, what you have done is take
13 one document from my client, one scientist from my
14 client, and you have taken another document from the
15 TIRC and you're trying to tie the two somehow to the
16 Reynolds marketing department.

17 So I just object to the form, and in that
18 context.

19 **MR. GRAY:**

20 Q. Let's skip to Page 13 now. Now, we are
21 all the way up to 1984.

22 And, sir, any of the documents cited in
23 this report have just been brought into the room.
24 So I will be glad to show them to you, if you would
25 like. On Page 13 at the bottom, there is a bullet

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1 point and it says, An '84 RJR ad in *Time Magazine*
2 states: Studies which conclude that smoking causes
3 disease have regularly ignored scientific evidence
4 to the contrary.

5 **MR. DURHAM:**

6 Regularly ignored significant.

7 **MR. GRAY:**

8 Q. Oh, I'm sorry. Significant evidence to
9 the contrary. Assume for a second that the only
10 in-house study that you have seen in your company is
11 the study on Page 18. Your scientist concludes, he
12 has reviewed the research, and studies of clinical
13 data tend to confirm the relationship. Is it
14 appropriate to issue a press release or issue an ad
15 that states otherwise?

16 **MR. JONES:**

17 Let me object to the form of the question
18 on behalf of Philip Morris. And I would like to
19 make the observation, too, that this is all a waste
20 of time because I don't believe you're going to ever
21 be able to prove that Owens Corning ever smoked a
22 cigarette, let alone ever smoked a cigarette because
23 anything anybody said from the tobacco industry, and
24 this is a complete waste of time.

25 **MR. GRAY:**

1 Thank you.

2 Q. You can answer the question, sir.

3 MR. SASSER:

4 Can you repeat the question?

5 MR. GRAY:

6 Q. The question I'm trying to ask and I
7 can't get an answer to is: Do you believe that
8 marketers of products have a duty to make truthful
9 statements about the health effects of their
10 products, whether they be in ads, press releases, or
11 otherwise?

12 MR. SASSER:

13 Object to the form. You have gotten an
14 answer to that.

15 MR. DURHAM:

16 I object to the commentary.

17 A. Marketers should tell the truth. That's
18 the important part of marketing ethics, as we
19 discussed earlier.

20 MR. GRAY:

21 Q. And they should tell the truth in ads, in
22 press releases, in all forms of their marketing
23 communications, correct?

24 A. Marketing communications should depict
25 the truth.

1 Q. Should depict the truth. Okay. Do you
2 believe that a statement that, Studies which
3 conclude that smoking causes disease have regularly
4 ignored significant evidence to the contrary, assume
5 that R.J. Reynolds has internally acknowledged that
6 smoking does cause disease, based on that
7 assumption, would this '84 statement be truthful?

8 MR. SASSER:

9 Objection.

10 MR. GRAY:

11 Q. On Page 13.

12 MR. SASSER:

13 Objection to the assumption.

14 MR. GRAY:

15 Q. I'm not asking for your opinion as to
16 what R.J. Reynolds' knowledge was because you have
17 said you're not a medical doctor.

18 A. I'm not a science expert, so I don't
19 know. I don't have a professional opinion on the
20 scientific medical aspects of your questions.

21 Q. But if R.J. Reynolds had internally
22 concluded that smoking causes disease, this
23 statement would be unethical, wouldn't it, sir?

24 MR. SASSER:

25 Objection.

1 A. Sir, I think before I respond, it would
2 be important to look at a number of things. One
3 statement could be very well taken out of context.

4 **MR. GRAY:**

5 Q. This statement could be taken out of
6 context you think?

7 A. Well, let's go to the next one, then, on
8 Page 13. In response to this ad, Ted Koppel
9 interviewed the RJR Chairman of the Board, Edward
10 Horrigan. Koppel - Cigarette smoking does not cause
11 cancer, yes or no? Horrigan - It is not known
12 whether cigarettes cause cancer. Koppel - All
13 right, sir. Horrigan - It has not been causally
14 established.

15 Q. Is there any doubt as to the context of
16 that statement? Or stated differently, it appears
17 to be that the RJR Chairman of the Board is
18 unequivocally stating that it is not known whether
19 cigarettes cause cancer?

20 A. Sir, I'm not a health expert. I'm not a
21 science expert.

22 **MR. DURHAM:**

23 I object to the form. I'm not sure there
24 is a question pending.

25 **MR. GRAY:**

1 I think there was.

2 Q. Is there any doubt about the context of
3 that statement, sir?

4 **MR. DURHAM:**

5 Object to the form.

6 **MR. SASSER:**

7 Objection.

8 A. Could you restate the question, please,
9 sir?

10 **MR. GRAY:**

11 Q. You said the 1984 ad -- in response to a
12 question about the '84 ad, you said the statement
13 needs to be read in context. It could have been
14 taken out of context. I got the impression that,
15 perhaps, there was something equivocal about the '84
16 ad.

17 So in reading the statement from Edward
18 Horrigan, is there anything equivocal about his
19 statement? Isn't it very clear that he is on
20 national television saying is it not known whether
21 cigarettes causes cancer?

22 **MR. SASSER:**

23 Objection. It can very easily be taken
24 out of context because in order to put this in
25 context you would have to know the state of the

1 scientific knowledge at the time. You would have to
2 know a whole wealth of things that this gentleman is
3 not here to testify about. He is a marketing
4 expert. He's not a scientist. He is not aware of
5 the state of scientific knowledge at any point in
6 time.

7 **MR. GRAY:**

8 I agree with that. I'm not trying to ask
9 him to tell me what the state of scientific
10 knowledge is.

11 **MR. SASSER:**

12 Well, you're asking him whether or not a
13 statement about science was in context or not, and
14 he has no idea what the context was in 1984.

15 **MR. GRAY:**

16 Well, then, I'll rephrase the question.

17 Q. Is there any doubt in your mind as to
18 whether or not Ed Horrigan wants people to -- let me
19 rephrase that. Ed Horrigan says, It is not known
20 whether cigarettes cause cancer. Is there any
21 ambiguity in that statement?

22 **MR. SASSER:**

23 Objection.

24 A. Sir, I'm not a scientist. I'm not in a
25 position to determine whether or not there is -- I

1 don't know enough about science or medicine to
2 respond to that the way that you're asking the
3 question.

4 **MR. GRAY:**

5 Q. Because in 1984, it's very possible that
6 there were some people who were not sure whether or
7 not smoking caused disease, correct?

8 **MR. SASSER:**

9 Objection.

10 A. Sir, I don't have a response.

11 **MR. GRAY:**

12 Q. Do you have an opinion as to whether or
13 not smokers or other people in the general public in
14 1984 were aware that smoking caused disease?

15 **MR. SASSER:**

16 Objection.

17 **MR. GRAY:**

18 Q. If you don't have an opinion, that's
19 okay. You can tell me you don't have an opinion.

20 A. I'm not a science expert. I'm not a
21 medical expert. So I'm not in a position to respond
22 to medical or scientific-related questions.

23 Q. And you're not going to offer any
24 opinions in this case about consumers' perceptions
25 of the health risks of smoking; is that correct,

1 sir?

2 A. I'm going to offer opinions on the items
3 stated in my report.

4 Q. Okay. Do you say anything in your report
5 about smokers' or non-smokers' perceptions of the
6 health risks of smoking?

7 A. There are various aspects of consumer
8 decision making as it relates to smoking initiation
9 and smoking -- the use of cigarettes mentioned in
10 the report.

11 Q. Okay. Is one of those aspects the
12 perception of the health risks of smoking?

13 A. I discuss in the report how consumers
14 make decisions about products or brands. And as
15 part of that decision making process, perception is
16 part of that. If you refer to the model of consumer
17 decision making, perception is part of that model.

18 Q. Are the perceptions of health risks part
19 of that model?

20 **MR. SASSER:**

21 Objection.

22 A. When consumers make decisions, they make
23 them for a wide variety of reasons. When choices
24 are made, choices are made for a lot of different
25 reasons. How consumers perceive various brands for

1 whatever reasons, those perceptions impact the
2 decision making process.

3 **MR. GRAY:**

4 Q. Do you have any opinion as to whether or
5 not smokers' perception of the health risk of
6 smoking affects their decision whether or not to
7 continue to smoke?

8 **MR. SASSERY:**

9 Objection.

10 A. Consumers will make the initial purchase
11 decision and the continuing purchase decisions based
12 on a wide range of variables, and those variables
13 are detailed in Exhibit 2.

14 **MR. GRAY:**

15 Q. Dr. Williams, what I want to know is are
16 you going to testify in Jefferson County as to the
17 public's perceptions of the health risks of smoking
18 at any point in time?

19 A. If I am asked to testify, I will testify
20 based on the items listed in the expert report.
21 Perception as an integral part of the consumer
22 decision making process will be included in that.

23 Q. Is there anything in your reliance list
24 or your disclosure that relates to smokers'
25 perception of the health risks of smoking?

1 A. Items on the reliance list as well as
2 information in the various exhibits will look at
3 consumer decision making in general and the choices
4 consumers make and how they form those choices. As
5 part of that, the perception of any number of risks
6 might be part of that.

7 There are certain risks associated with
8 the purchase of any number of items. The purchase
9 of an airline ticket. Flying a plane. So consumers
10 assess risk in any number of purchases. And I don't
11 think that tobacco products would be any different.

12 Q. Well, but I'm asking you, do you have an
13 opinion as to whether or not consumers' perceptions
14 of health risks affect their decisions of whether or
15 not to smoke?

16 A. My opinion is that the perceptions of
17 consumers will affect their decision making
18 processes with respect to the consumptional role,
19 period.

20 Q. Okay. Do you have any specific opinion
21 about consumers' perceptions of health risks of
22 smoking?

23 A. Sir, there is a warning on the package of
24 cigarettes. Consumers see that warning. They can
25 process that information, and there is general

1 awareness in the marketplace about some of the
2 dangers associated with tobacco smoking?

3 Q. What are some of those dangers?

4 A. Sir, I'm not a health care expert, and
5 what I know is limited to what is on that package in
6 terms of the specific -- you know, at this point as
7 I sit here, I can't give you any specifics. I know
8 that there is a warning label and that in general
9 consumers are aware.

10 Q. Aware of what?

11 A. They are aware of some of the
12 health-related concerns that might result from the
13 use of this product. And that is listed on the
14 label. And beyond that, I'm not an expert in the
15 sense that I can give you specifics or any detail.

16 **MR. SASSER:**

17 Can we go off the record?

18 **MR. GRAY:**

19 Yeah.

20 (Off the record.)

21 **MR. GRAY:**

22 Q. Dr. Williams, do you have an opinion as
23 to the public's perceptions of the health risks of
24 smoking?

25 A. I do not. As I sit here today, I do not.

1 MR. GRAY:

2 I assume if Dr. Williams develops
3 opinions in those topics, he will testify, and we'll
4 get another round.

5 MR. SASSER:

6 That's right.

7 MR. GRAY:

8 We have gotten a little off track. Why
9 don't we take a quick break?

10 (Off the record.)

11 MR. GRAY:

12 Q. Dr. Williams, just to clarify my question
13 I asked there at the end -- I hope I'm not reopening
14 a can of worms -- do you have an opinion about the
15 public's perceptions of the health risks of smoking
16 at any time in the past?

17 A. I'm aware of the fact that the warning
18 label has appeared on the package since 1964. So
19 people have seen that label and they are aware of
20 some of the health concerns.

21 MR. DURHAM:

22 Tim, maybe I can shorten this. It might
23 be simpler -- I'm not trying to put words in your
24 mouth -- but to ask Dr. Williams if he has been
25 asked to offer an expert opinion in this case as to

1 the public's perceptions of the health risks of
2 smoking as to any period of time in the past and see
3 if that deals with the issue you're going to
4 address, he may have opinions but not have been
5 asked to express them in this case.

6 **MR. GRAY:**

7 Q. Have you been asked to express an opinion
8 in this case as to the public's perceptions of the
9 health risks of smoking, as perceptions today or
10 perceptions at any time in the past?

11 A. I have been asked to render opinions
12 related to marketing, advertising and consumer
13 behavior.

14 **MR. GRAY:**

15 Can I get a representation from counsel
16 for the tobacco defendants that Dr. Williams will
17 not testify to the public's -- or in your case in
18 chief -- Dr. Williams will not testify as to the
19 public's perceptions of the health risks of smoking
20 at any time?

21 **MR. DURHAM:**

22 Can we go off the record?

23 **MR. GRAY:**

24 Sure.

25 (Off the record.)

1 MR. DURHAM:

2 We will agree that Dr. Williams has not
3 been asked to render an expert opinion at trial or
4 as to the public perceptions of the health risks of
5 smoking at any time in the past, and we do not plan
6 to ask him those questions at trial.

7 Is that satisfactory?

8 MR. GRAY:

9 Yes.

10 Q. Dr. Williams, I have got your vita which,
11 I believe, is Exhibit 3. You spent your entire
12 career in the academic field, correct?

13 A. I have worked in the academic field, yes.

14 Q. Okay. When did you graduate -- you
15 graduated from the University of Southern
16 Mississippi with a degree in marketing in '74,
17 correct?

18 A. That is correct.

19 Q. You received a masters at the University
20 of Alabama in '75, correct?

21 A. Yes. That is correct.

22 Q. You were then a full-time instructor at
23 Alabama A&M University from '75 to '77; is that
24 correct?

25 A. That is correct.

1 Q. Were there any other jobs you held after
2 you graduated from USM in '74 until you became a
3 full-time instructor in '75?

4 A. No.

5 Q. What did you do in 1978, sir?

6 A. In 1978, I was a Ph.D. student at the
7 University of Arkansas in Fayetteville. And as part
8 of that, I taught.

9 Q. And then from looking at your vita from
10 1979 through the present, you have held a full-time
11 teaching position, correct?

12 A. I started teaching at the University of
13 Southern Mississippi in 1980.

14 Q. Okay. So in '79 --

15 A. I was at the University of Arkansas.

16 Q. And you were at instructor while you were
17 pursuing your Ph.D.?

18 A. I taught classes while I was pursuing my
19 degree, yes.

20 Q. Okay. On Page 17 of your vita -- I
21 think. I'm trying to shortcut this -- there is a
22 list of subjects taught. Is this inclusive of every
23 subject you've ever taught, or is this more the
24 subjects you now have been teaching at USM for the
25 past few years?

1 A. This is a list of topics that I have
2 taught for a number of years. It may not include
3 every single course that I have taught, but it is
4 representative of the courses that I have taught and
5 continue to teach.

6 Q. Okay. What courses are you teaching this
7 semester?

8 A. As we speak at this point, I'm teaching
9 Sales Management and an MBA marketing seminar called
10 Marketing Foundations.

11 Q. Over the last, say, two academic years,
12 are there other courses you have taught?

13 A. Over the past two academic years, I have
14 taught Principles of Purchasing and Industrial
15 Marketing.

16 Q. Did any of those courses involve the
17 concept of product life cycle?

18 A. Yes.

19 Q. Okay. Would all of them have involved
20 product life cycle?

21 A. The product life cycle would have been
22 involved in the MBA Marketing Foundations course,
23 the Industrial Marketing class, the Sales Management
24 class and in the purchasing class.

25 Q. Okay. can you tell me what texts, if you

1 can recall, you have used in those courses?

2 A. In the MBA marketing class, I'm using a
3 text labeled Marketing Management by Czinkota,
4 C-Z-I-N-K-O-T-A, and Kotabe, K-O-T-A-B-E.

5 In the Sales Management course, I'm using
6 a book by Dalrymple, D-A-L-R-Y-M-P-L-E. And I don't
7 remember the co-authors. This is my first time
8 using this particular text. It's labeled as Sales
9 Management. It's titled as Sales Management.

10 In the Principles of Purchasing class,
11 I'm using a textbook by Monczka, M-O-N-C-Z-K-A,
12 Hanfield and Trent. And it is labeled Supply Chain
13 Management.

14 For the industrial marketing course, I am
15 using a book by Dwyer, D-W-Y-E-R, Business Marketing
16 Management. I believe it's Dwyer and Tanner, but
17 I'm not 100 percent sure.

18 Q. You gave it to me earlier. What is your
19 current position? You're head of the --

20 A. I'm chair and professor of the Department
21 of Management and Marketing.

22 Q. What are some of your duties as the
23 chair?

24 A. I am the chief administrative officer for
25 the department. I recruit faculty. I evaluate

1 faculty, evaluate their research, their classroom
2 performance. I evaluate their service contributions
3 and their general productivity as members of the
4 faculty. I schedule courses. I handle budgets.
5 And I represent the department at the college and
6 university levels.

7 Q. Has that position as chair hindered, I
8 guess, your ability to publish? Has it cut into
9 your time in any way?

10 A. If I did not have administrative
11 responsibilities, it's possible that I would have
12 contributed additional things to the literature.

13 Q. Okay. In looking at your vita, I see a
14 lot of articles that use the phrase "organizational
15 buyer" in the title. What is an organizational
16 buyer?

17 A. An organizational buyer is an individual
18 that purchases goods and services for an
19 organization, profit or nonprofit.

20 Q. Would you say that that is an area that
21 is a specialty of yours, organizational buying?

22 A. I would consider that an area of
23 specialization, yes.

24 Q. Do you have other areas of
25 specialization?

1 A. Business to business marketing, marketing
2 strategy and supply chain management.

3 Q. Okay. Would it be fair to say that
4 organizational buying, business to business
5 marketing and supply chain management do not
6 primarily focus on consumer purchase transactions?

7 A. What happens at the organizational buying
8 level is very dependent at what happens at the
9 consumer level. So a thorough understanding of
10 consumer buying -- consumer decision making
11 processes, an understanding of that is critical in
12 order to do organizational buying. You can't
13 separate those. You have to understand ultimate
14 consumer buying in order to do a good job of
15 organizational buying.

16 Q. Okay. But you start with whatever your
17 base level of consumer buying is and then, for
18 example, you would go on and do further research in
19 the area of business to business marketing before
20 you would publish a paper in business to business
21 marketing, correct?

22 A. Sir, could you restate that and make sure
23 that I followed you correctly?

24 Q. Before you published a paper on business
25 to business marketing, I would assume you would do

1 research in the area of business to business
2 marketing, correct?

3 A. That is correct.

4 Q. You probably wouldn't do research in the
5 area of consumer marketing in order to write the
6 business to business marketing paper, correct?

7 A. You would have to have an understanding
8 of consumer marketing in order to prepare the paper.
9 Because business to business marketers exist only
10 from the standpoint that ultimate consumers are
11 buying something. So a thorough understanding of
12 the consumer level is extremely important for
13 business to business level. It would be difficult
14 in a thorough coverage to divorce those two.

15 Q. But your research, you could divorce the
16 research, couldn't you? You would primarily rely on
17 your existing understanding of consumer marketing?

18 A. You would have to have that understanding
19 before proceeding to do a thorough job of developing
20 a paper in the business to business marketing area.

21 Q. What about marketing strategy?

22 A. Marketing strategies would cover both
23 business to business marketing as well as household
24 consumer marketing.

25 Q. Do you know whether the majority of your

1 publications in the marketing strategy area involved
2 business to business as opposed to personal?

3 A. A large percentage of those involve
4 business to business marketing, but the principles
5 are the same. Marketing principles and concepts
6 span both of those areas. They are certainly
7 interchangeable.

8 Q. Is there anything about your expertise in
9 supply chain management that provides a basis for
10 your opinions in this case?

11 A. As part of the supply chain management
12 process, understanding the consumer is key. All
13 supply chains, if they are effective over the long
14 run, are consumer oriented. So understanding the
15 consumer and how consumers make decisions would have
16 to be part of any supply chain effort. So to the
17 extent that supply chain relates to understanding
18 ultimate consumers, the answer is, yes, it's very
19 helpful in that regard.

20 Q. But it sounds to me like what you just
21 said -- and correct me if I'm wrong -- is that
22 understanding consumers is necessary for supply
23 chain management?

24 A. If you are to have a good supply chain
25 management process, you have to understand ultimate

1 consumers.

2 Q. Okay. In order to understand the
3 consumer, do you have to know anything about supply
4 chain management?

5 A. You need to understand how consumers buy,
6 and the supply chain will certainly get items from
7 Point A to Point B to Point C to the consumer. So
8 it's important to understand both directions.

9 Q. So you think for someone to understand
10 the consumer decision making process, they need to
11 have a solid grasp on supply chain management?

12 A. I would not say a -- they would need to
13 have an understanding of it; but if you are going to
14 focus on the consumer, it's good to understand how
15 consumers get those products, how they get goods and
16 services. And that supply chain is going to provide
17 them with the goods and services.

18 Q. How does that help you understand the
19 consumer's thought process? Let me strike that and
20 ask another question.

21 Does the consumer have any understanding
22 of the supply chain?

23 A. Consumers are aware of how goods and
24 services get to them. It's a matter of convenience.
25 It's a matter of where they buy things and how they

1 buy them.

2 Q. Does the management of that supply chain
3 affect the consumer's decision in any way other than
4 the obvious decision that if the product isn't there
5 on the shelf they can't buy it?

6 A. An individual consumer does not have to
7 understand the intricacies of supply chain
8 management.

9 Q. Okay. And to understand the individual
10 consumer's decision making process, a marketer
11 doesn't have to understand supply chain management,
12 does he?

13 A. A marketer has to understand how products
14 get to the consumer, and the supply chain will
15 provide that information and that knowledge. That's
16 a mechanism through which consumers needs are
17 satisfied. That's how we get products.

18 Q. Is there anything in your understanding
19 of supply chain management that forms your opinions
20 on issues of primary demand?

21 **MR. DURHAM:**

22 Object to the form.

23 **MR. SASSER:**

24 Objection.

25 A. Could you restate that, please?

1 **MR. GRAY:**

2 Q. Is there anything involved with supply
3 chain management that relates to questions of
4 primary demand?

5 **MR. SASSER:**

6 Object to the form.

7 **MR. DURHAM:**

8 Objection.

9 A. The supply chain involves a number of
10 interrelated, integrated elements. A number of
11 integrated factors and variables. And those
12 variables are designed to help to satisfy the needs
13 and wants of consumers. The supply chain will get
14 products, goods and services to consumers. An
15 understanding of how consumers buy, the
16 understanding of the demand patterns of consumers,
17 that's critical in managing every step of that
18 chain.

19 **MR. GRAY:**

20 Q. I understand you need to understand the
21 consumer to manage the chain. I'm trying to figure
22 out what knowledge about the chain has to do with
23 primary demand.

24 A. Many people view the supply chain from a
25 marketing perspective. Marketing and the things

1 that marketing people do, those are integral aspects
2 of managing the supply chain. The supply chain
3 itself is not separate and distinct from marketing.

4 The supply chain is very important in the
5 definition that we talked about earlier of marketing
6 and the core element of exchange. We said that
7 marketing people facilitate the exchange process.
8 The supply chain is part of understanding that
9 exchange at every level.

10 Q. Have you done any consulting work?

11 A. I have done consulting, yes.

12 Q. Okay. For whom?

13 A. I conduct training programs in the supply
14 chain management area for companies and purchasing
15 organizations.

16 Q. Okay. Other than supply chain
17 management, have you done any other consulting?

18 A. In the past throughout my career, I have
19 done consulting in different areas, but I have not
20 done that in the last several years. I have
21 provided consulting reports to groups on
22 marketing-related topics in the past, but not in the
23 past few years.

24 Q. Okay. So you have done some supply chain
25 management consulting, and then in the past for two

1 groups, you have consulted on marketing related --
2 other marketing-related topics; is that right?

3 A. I don't have a number, but over the span
4 of my career, I have provided marketing advice to
5 companies and individuals in different forms, both
6 formal and informal.

7 Q. Can you tell me about some of those
8 formal consultancies?

9 A. Two things that come to mind -- and I do
10 not remember the exact dates associated with them --
11 there was a report prepared for the Gulf Coast of
12 Mississippi, the Convention and Visitors Bureau,
13 about the marketing of the Gulf Coast and the
14 promotion of that. And I do not remember the year.
15 I also did a sales/marketing training in conjunction
16 with a group of colleagues for a utility company on
17 the Mississippi Gulf Coast.

18 Those are the two things that come to
19 mind as I sit here today, but I will not say that
20 those are the only things that I have done. Over
21 the course of 20-plus years, a number of consulting
22 opportunities have come and gone.

23 Q. Do you recall whether you have ever done
24 any consulting with respect to a consumer product?

25 A. Sir, whenever I do consulting in

1 marketing-related areas, you're looking at consumers
2 and you're looking at how they buy and the decision
3 making processes involved in that body.

4 Q. A consumer good as opposed to utilities,
5 as opposed to spending time on the Gulf Coast, a
6 consumable consumer good?

7 A. As I sit here today, I cannot think of
8 one.

9 Q. Okay. What about public relations work?
10 Have you ~~done~~ any public relations work other than
11 work would that would be involved in the marketing
12 consultancy you have already discussed?

13 A. I have not.

14 Q. Would there have been an element of
15 public relations work in your work with the Gulf
16 Coast?

17 A. As I sit here today, I do not remember.

18 Q. What about with the utility company, do
19 you think there would have been a public relations
20 aspect of that?

21 A. At this point, I do not remember.

22 Q. Okay. I noticed in your vita that you're
23 also a member of the athletic marketing committee?

24 A. At one time I was.

25 Q. Okay. Do you recall when that was,

1 generally?

2 A. That would have been during the decade of
3 the '90s.

4 Q. Were you the chair of that committee?

5 A. I was not.

6 Q. And do you recall how long you were on
7 it? Two years? Five years?

8 A. I do not recall.

9 Q. More than a year?

10 A. Yes.

11 Q. Were you very active in that committee?

12 A. This was a group that was formed to
13 provided marketing advice.

14 Q. To the university?

15 A. Yes. To central administrators of the
16 university regarding athletics.

17 Q. Did the committee ever develop a
18 marketing plan?

19 A. A plan was developed.

20 Q. Did you participate in the development of
21 that plan?

22 A. I did participate in its development.

23 Q. Who was the university trying to market
24 to primarily? Students? Residents of the City of
25 Hattiesburg?

1 A. As I sit here today, it's my
2 understanding that the university was attempting to
3 reach a wide range of stakeholders.

4 Q. Do you recall what type of activities
5 were suggested in that marketing plan, what type of
6 marketing activities were proposed?

7 A. I do not remember the details of the plan
8 as I sit here today.

9 Q. Okay. In your courses -- scratch that.
10 Do some of the courses you teach involve public
11 relations?

12 A. There is a component of publicity and
13 public relations in the chapters that deal with
14 marketing communications.

15 Q. Public relations are a part of the total
16 marketing mix; is that correct, sir?

17 A. Publicity is an important part of the
18 marketing mix, which is part of promotion. The
19 promotion mix is part of the overall marketing mix.
20 And as part of the promotional effort, public
21 relations would be a component.

22 Q. Okay. And one aspect of public relations
23 would be issuing public statements, correct, sir?

24 A. That could be a component.

25 Q. And, in general, would you agree, sir,

1 that when a company issues a public statement, it
2 intends for that message to be heard, correct?

3 **MR. SASSER:**

4 Objection.

5 A. Could you define what you mean by being
6 heard?

7 **MR. GRAY:**

8 Q. Sure. Is it possible that a company
9 would ever issue a press release with the hope that
10 no one would read it?

11 **MR. DURHAM:**

12 Object to the form.

13 **MR. GRAY:**

14 Q. Within your understanding of marketing
15 and public relations, as a general matter, can you
16 conceive of any way in which a company would ever
17 want to issue a press release as a part of its
18 marketing campaign but that company would intend
19 that no one read a press release?

20 A. Marketing efforts are focused on
21 particular groups, particular stakeholders.
22 Marketing message are focused, are targeted toward
23 particular groups, and those messages have goals.

24 Q. So the goal of any public relations
25 campaign or press release is that at least somebody

1 is going to hear the message, correct?

2 A. Different campaigns will have different
3 goals. But marketing campaigns communicate
4 something to particular groups, some message.

5 Q. And when a company issues a message, in
6 general, it would want that message to be received
7 accurately, correct?

8 A. The companies develop marketing campaigns
9 and messages, but how they are received on the other
10 end by the various stakeholders is well beyond their
11 control.

12 Q. It's beyond their control, but they want
13 the message to be received accurately, don't they?

14 A. Companies generally would like to --

15 **MR. SASSER:**

16 Objection.

17 A. Companies would like to portray what they
18 do in a positive light.

19 **MR. GRAY:**

20 Q. And in order to portray in a positive
21 light, the company would want to make sure that its
22 statements, its public statements, were complete and
23 accurate, wouldn't it, sir?

24 **MR. SASSER:**

25 Object to form.

1 A. Could we rephrase that, sir, for my
2 understanding?

3 **MR. GRAY:**

4 Q. In general, when companies issue public
5 statements as a part of their total marketing
6 effort, companies should make efforts as an ethical
7 matter, shouldn't they, to make sure that these
8 statements are complete and accurate?

9 **MR. DURHAM:**

10 Object to the form.

11 **MR. SASSER:**

12 Objection.

13 A. When companies issue communications or
14 messages, those messages have intended meanings, and
15 those message have goals. And those messages are
16 focused and aimed toward particular groups or
17 segments for particular reasons. And that could
18 vary depending on the situation.

19 **MR. GRAY:**

20 Q. It will always vary, but the company
21 making the statement wants the statement to have
22 some type of impact, correct?

23 A. Marketing messages have goals, and those
24 goals represent what the company would like for that
25 message to be. And messages generally have targets

1 or segments to whom they are focused just as
2 products have.

3 Q. Okay. You would agree, wouldn't you,
4 that all companies in their marketing campaigns want
5 to project an image of respectability and trust,
6 correct?

7 **MR. DURHAM:**

8 Object to the form.

9 A. Could you rephrase that, sir?

10 **MR. GRAY:**

11 Q. As part of a company's marketing
12 campaigns, don't companies typically want to project
13 an image of trust?

14 **MR. DURHAM:**

15 Object to the form.

16 A. Companies put together marketing
17 campaigns to convey multiple messages. Companies
18 would like to have their products, their brands,
19 presented in positive ways, but each message could
20 have a different type of goal.

21 **MR. GRAY:**

22 Q. One of those goals can be establishing
23 trust with the consumer, correct?

24 A. It may not be in all situations, but it
25 could be a possibility.

1 Q. Could be. And you would also agree,
2 wouldn't you, Dr. Williams, that to the extent a
3 company creates an image of trust in its public
4 relations campaigns, that image enhances the
5 effectiveness of its advertising campaigns as a
6 part of the total marketing mix, correct?

7 MR. SASSER:

8 Objection.

9 MR. DURHAM:

10 Object to form.

11 A. Could you restate that, please?

12 MR. GRAY:

13 Q. Earlier, I think we discussed that
14 various components of the marketing mix often work
15 together?

16 A. Yes.

17 Q. And, in fact, that's the goal of a
18 well-planned marketing campaign, correct, for all of
19 the various components to work together?

20 A. All of the elements of the marketing mix
21 should work together in an integrated fashion in
22 order to have a good marketing strategy.

23 Q. Okay. In a well-planned marketing
24 strategy, would you agree that the use of public
25 relations efforts to establish an image of trust

1 will likely enhance the effectiveness of ad
2 campaigns?

3 **MR. SASSER:**

4 Object to the form.

5 **MR. DURHAM:**

6 Objection.

7 A. Could you rephrase that, please?

8 **MR. GRAY:**

9 Q. Is it helpful to a company in selling its
10 products if consumers generally trust the seller of
11 that product?

12 A. Trust, trust is an important part of
13 conveying a message.

14 Q. And if consumers trust the company
15 conveying advertising messages, those advertising
16 messages are likely to be well received, correct?

17 **MR. SASSER:**

18 Objection.

19 **MR. DURHAM:**

20 Objection.

21 A. The level of trust that a particular
22 consumer will have with respect to a brand or a
23 company will vary depending upon a number of
24 different variables. Trust is not going to be
25 established based on one particular thing.

1 MR. GRAY:

2 Q. One component of establishing trust in a
3 company is that company's public statements and
4 other public relation efforts, correct, one
5 component?

6 MR. SASSER:

7 Objection.

8 A. Trust can be formed in different ways for
9 different people at different levels. There are
10 different possibilities for different consumers.

11 MR. GRAY:

12 Q. So as a marketing expert, you have no
13 opinion as to whether or not public relations
14 efforts can create an image of trust among
15 consumers?

16 MR. SASSER:

17 Objection.

18 A. A public relations message can convey an
19 idea or a set of meanings about a company and what
20 it does and how it does it. How those meanings are
21 perceived by those receiving the message will vary
22 depending upon a number of factors.

23 MR. GRAY:

24 Q. They will vary, but the marketer's goal
25 is always to get a particular reaction from the

1 consumer, isn't it?

2 A. Marketing campaigns at every level will
3 have different goals. And those goals are directed
4 at different groups for different purposes at
5 different times.

6 Q. And establishing trust and confidence in
7 the marketer of the product can be one of those
8 goals? Can be?

9 A. There are a lot of possibilities, and it
10 is possible that that could be one of them.

11 Q. For example, have you seen the Philip
12 Morris television advertisements regarding funding
13 of battered women shelters?

14 A. As I sit here today, sir, I cannot say
15 that I have seen that.

16 Q. Have you seen Philip Morris television
17 commercials regarding Philip Morris delivering food
18 to shut-ins?

19 A. As I sit here, I cannot say that I recall
20 that.

21 Q. Have you ever read the Frank Statement,
22 or are you familiar with the Frank Statement?

23 A. I am familiar with the Frank Statement.

24 Q. Do you recall whether or not you have
25 read it?

1 A. I have seen portions of it.

2 Q. In the Glover/Marshall report?

3 A. At this point, I do not remember where I
4 saw that statement.

5 Q. Do you have any opinion as to the
6 truthfulness of any of the representations made in
7 the Frank Statement?

8 **MR. SASSER:**

9 Objection.

10 A. It would be helpful if you could give me
11 a copy of the statement to refresh my memory.

12 **MR. SASSER:**

13 We have been through that, haven't we,
14 Tim? Isn't that part of what we talked about?

15 **MR. GRAY:**

16 And I'm trying not to go too far down
17 that road.

18 Q. Dr. Williams, you have had a chance to
19 look at the document entitled A Frank Statement to
20 Cigarette Smokers?

21 A. Yes.

22 Q. If I were to tell you that that was
23 published and distributed, or published in over 448
24 newspapers throughout the United States, would you
25 have any reason to doubt that?

1 A. At this point, no.

2 Q. Do you see there at the bottom where I
3 think it lists various tobacco companies?

4 A. Yes.

5 Q. Would it be fair to say that one could
6 reasonably read the names at the bottom of that
7 document to mean that those companies were
8 sponsoring that ad, endorsing the views in that ad?

9 A. The word "sponsors" is used, and below
10 the word "sponsors" are the names of companies.

11 Q. So it's apparent that those are
12 sponsoring the ad?

13 A. Those companies appear under the label
14 sponsor. One could draw that conclusion.

15 Q. Given that this appeared in newspapers
16 across the country, this would be part of the total
17 marketing mix for cigarettes, correct, sir?

18 A. I do not know if marketing people were in
19 charge of developing this or if public relations.
20 Different companies are organized in different ways.
21 In some companies, public relations is a separate
22 entity. So I don't know the origin of this in terms
23 of marketing people versus public relations people.

24 Q. Well, I thought public relations were a
25 part of promotion which were a part of marketing,

1 correct?

2 A. Publicity and public relations will come
3 under the promotional mix in many organizations, but
4 not in every single organization. Public relations
5 may very well appear in different areas in different
6 companies.

7 Q. Now, how would the question of whether or
8 not the marketing people or the public relations
9 people put that together, how would that question
10 have any impact on whether or not the ad which
11 appeared in 448 newspapers became a part of the
12 total marketing mix?

13 MR. SASSER:

14 Objection.

15 MR. DURHAM:

16 I will object. Is this supposed to be a
17 reproduction of one of the ads or some other sort of
18 subsequent retyping of the ad; do you know?

19 MR. GRAY:

20 I believe what you're looking at is a
21 retyping; although, the previous page, I think, is
22 actually a photocopy of the ad. If it turns out I'm
23 wrong and there is a typo in there, I apologize.
24 The retyping is easier to read. I think that's the
25 purpose of it.

1 A. Could you restate your question, please?

2 Q. Did that ad which appeared in 448
3 newspapers across the United States, did that become
4 a part of the total marketing mix with respect to
5 cigarettes?

6 MR. SASSER:

7 Objection.

8 MR. GRAY:

9 Q. In your opinion.

10 A. This ad communicated a set of meanings to
11 a wide range of individuals, to a wide audience.
12 And the meanings received from that by those
13 individuals would vary based on a number of other
14 factors. So this ad did communicate something to a
15 large number of individuals.

16 Q. And you would describe that
17 communication, then, as a part of the total
18 marketing mix as of January 1954 when that ad was
19 published, correct?

20 A. Again, I don't know if this particular
21 statement was under the control of marketing or
22 public relations, but it does convey meanings from,
23 my guess is, all of these sponsors listed at the
24 bottom.

25 Q. I guess that was my question before.

1 Once the ad is out there, the consumer doesn't know
2 if the marketing people or the public relations
3 people put it together, does he?

4 A. There is probably no way for a typical
5 reader of this to know the source.

6 Q. Then I'm confused as to why it matters in
7 your opinion as to whether or not the marketing
8 people were involved in that as opposed to the
9 public relations people?

10 A. Both marketing and public relations were
11 to develop a communications effort representing the
12 organization. Marketing people have a direct focus
13 on products. They have a direct focus on market
14 segments whereas public relations will have a much
15 broader view.

16 Q. Okay. So your distinction about whether
17 or not the marketing or the public relations people
18 put that together really goes towards what the
19 intent of the ad may have been as opposed to the
20 inception?

21 **MR. DURHAM:**

22 Object to the form.

23 **MR. SASSER:**

24 Objection.

25 A. My comment earlier focused on the areas

1 that marketing people normally have control over.
2 Marketing people focus primarily on products and
3 product development. They focus on promotion, on
4 pricing, on distribution. Public relations will
5 have a broader focus beyond just marketing.

6 **MR. GRAY:**

7 Q. And how does any of that impact on
8 whether or not that ad became a part of the total
9 marketing mix for cigarettes in January 1954?

10 **MR. SASSER:**

11 Objection. I think the confusion is
12 marketing mix and what you mean by that.

13 **MR. GRAY:**

14 Q. Have you used the phrase "marketing mix"
15 in this deposition?

16 A. Yes, I have.

17 Q. What do you mean by marketing mix, sir?

18 A. A total marketing mix includes the
19 product. It includes pricing, promotion, place or
20 distribution.

21 Q. And statements such as the Frank
22 Statement are a part of the promotion of a product,
23 correct?

24 A. It could be considered as part of the
25 promotional package and promotional mix.

1 Q. And whether or not it's considered as a
2 part of the promotional mix is dependent upon what?

3 A. Elements of the promotional mix are
4 designed primarily to communicate something about
5 what a company does, to communicate something about
6 a series of brands or a series of services that are
7 offered for sale.

8 Q. Or the product itself, correct?

9 A. Promotion is going to provide a wide
10 range of communication opportunities for companies.
11 And as part of that promotional mix, as we talked
12 about earlier, we have advertising. We have sales
13 promotion. We have personal selling, and we have
14 publicity and public relations sometimes together.

15 Q. So a statement can both be about a brand
16 and the product itself, correct?

17 A. When you develop an advertising campaign,
18 the nature of that campaign and what you do is in
19 large measure based on the stage of the product life
20 cycle in which the product is aimed. The majority
21 of consumer products are in the maturity stage. So
22 you're very interested in brands as opposed to
23 products.

24 Q. Dr. Williams, are you aware of the amount
25 of money expended annually by the tobacco industry

1 on advertising promotion?

2 A. Yes. I have an idea.

3 Q. Okay. And, roughly, what is your
4 understanding of those figures?

5 A. Based on the most recent FTC report that
6 I have, as I sit here today, I believe it is 7.2
7 billion dollars, as I sit here today.

8 Q. That's the '98 figures from the 2000
9 report?

10 A. It's the one that's referenced in the
11 report.

12 Q. You haven't seen the 2001 FTC report yet?

13 A. I have not.

14 Q. What about switching data? Have you
15 reviewed any switching data?

16 A. As I sit here today, I cannot remember
17 any specific information. I have read some things
18 regarding switching, but I could not give you any
19 specifics as we sit here.

20 Q. So you do not know what percentage of
21 cigarette smokers have switched from one brand to
22 another in any given year, correct?

23 A. I could not give you a specific number,
24 but I do know that switching behavior is extremely
25 common in the maturity stage of the life cycle

1 regardless of the product.

2 Q. So if switching behavior is extremely
3 common, in the cigarette industry what percentage of
4 cigarette smokers would switch brands annually?

5 **MR. SASSER:**

6 Objection.

7 A. Sir, I could not give you a number.

8 **MR. GRAY:**

9 Q. In order for switching to be common,
10 would it be a 30 percent switch annually?

11 A. I could not give you a number.

12 Q. If two smokers a year switch, would that
13 be -- would that mean that switching was common
14 within the cigarette industry?

15 **MR. SASSER:**

16 Objection.

17 A. Sir, as I sit here today, I know that in
18 the maturity stage of the product life cycle for all
19 consumer products, switching behavior occurs. I do
20 not have a number that I can give.

21 **MR. GRAY:**

22 Q. Well, wouldn't you have to know that
23 number to reach the conclusion that cigarettes were
24 a mature product?

25 **MR. SASSER:**

1 Objection.

2 A. Sir, there are different indicators as to
3 whether or not a particular product is in the
4 maturity stage of the product life cycle.

5 **MR. GRAY:**

6 Q. So switching is common -- let me back up.
7 Brand switching does not have to be
8 common in order for a brand to be in the mature
9 stage; is that your opinion?

10 A. It is my opinion that brand switching is
11 a characteristic of the maturity stage of the
12 product life cycle.

13 Q. But it's not an necessary characteristic;
14 is that your opinion?

15 A. It's my opinion that brand switching is a
16 characteristic of the maturity stage of the product
17 life cycle.

18 Q. Is it necessary by definition?

19 A. When marketing people describe the
20 product life cycle stages and discuss brand
21 switching behavior, brand switching behavior is
22 associated with the maturity stage of that cycle.
23 That's the stage in the life cycle that switching is
24 most likely to occur.

25 Q. So if switching is not common in the

1 cigarette industry, that's evidence that, perhaps,
2 the cigarette market is not mature, correct?

3 A. Cigarettes are in the maturity stage of
4 the product life cycle.

5 Q. If less than one percent of cigarette
6 smokers switched brands a year, would that affect
7 your opinion as to whether or not cigarettes are in
8 the mature stage of the product life cycle?

9 **MR. SASSER:**

10 Objection. One thing, one area of
11 confusion, may be on your definition of switching.
12 If you go in and buy your alternative brand one
13 time, if you buy it several months, if you buy it
14 all year on, does all of that constitute switching?
15 I just want to get that objection on the record.

16 **MR. GRAY:**

17 Okay.

18 Q. If fewer than one percent of all smokers
19 switched brands, would that affect your opinion as
20 to whether cigarettes are in the mature stage of the
21 product life cycle?

22 **MR. SASSER:**

23 Objection.

24 A. Brand switching behavior is part of the
25 maturity stage of the life cycle regardless of the

1 product. Cigarettes versus any other consumer
2 product.

3 MR. GRAY:

4 Q. And regardless of the rate of switching?

5 MR. SASSER:

6 Object. Let me get a continuing
7 objection to the "switching" questions, if that's
8 all right, Tim.

9 MR. GRAY:

10 Yeah.

11 Q. Here's what I'm trying to understand. Is
12 it your testimony that there is always more
13 switching in the maturity stage than there is in the
14 growth stage?

15 A. Is it my testimony that brand switching
16 behavior is a major characteristic of products in
17 the mature stage of the product life cycle.

18 Q. Okay. Yet, in reaching your opinion that
19 cigarettes are in the mature stage, you haven't done
20 any analysis of brand switching rates, have you,
21 sir?

22 A. Sir, I have reviewed different pieces of
23 information relating to brands. As I sit here
24 today, I cannot remember a specific thing that I
25 could share.

1 Q. Let's look at your reliance list. Is
2 there anything on this list that has information
3 about switching rates, to the best of your
4 recollection?

5 A. To the best of my recollection, I cannot
6 select a particular reference that does address a
7 specific switching number. If you would show me
8 something, I could respond.

9 Q. The source of your opinions in this case,
10 though, are in these reliance materials, correct?

11 A. These reliance materials and my knowledge
12 of marketing in general across a broad range of
13 product categories.

14 Q. But you have no general knowledge about
15 switching rates with respect to cigarette consumers,
16 correct?

17 A. I may have seen that number, sir, but as
18 I sit here, I cannot give you a switching rate
19 number.

20 Q. And it doesn't matter what that number
21 is, your opinion is still that cigarettes are in the
22 mature stage of the product life cycle, correct?

23 A. What I know about marketing and what I
24 know about product strategy and what I have reviewed
25 in the literature and just my general marketing

1 knowledge, I know that cigarettes are in the
2 maturity stage of the product life cycle.

3 Q. Yet, you have no idea what percentage of
4 smokers either switch brands in a given year or
5 switch from one sub-brand of cigarettes within a
6 family of cigarettes within a given year, correct?

7 A. At this particular point, I do not have a
8 given number in terms of switchers.

9 Q. Do you know whether more or less than two
10 percent of cigarette smokers switch brands in a
11 given year?

12 A. Sir, at this point, I do not know that.

13 MR. GRAY:

14 It's noon. Let's go off the record a
15 second.

16 (Off the record.)

17 MR. GRAY:

18 Q. Dr. Williams, do you agree that teenagers
19 are nearly three times as likely as adults to smoke
20 the most heavily advertised brands? Are you
21 familiar with that statistic?

22 A. I have seen articles and material on
23 smoking and brands, but I don't have an exact number
24 as you have indicated.

25 Q. Would that figure surprise you?

1 A. Could you repeat that again to make sure,
2 that number?

3 Q. Teenagers are nearly three times as
4 likely as adults to smoke the most heavily
5 advertised brands of cigarettes.

6 A. And your question is?

7 Q. Do you have any reason to dispute that
8 number?

9 **MR. SASSER:**

10 Object to form.

11 A. Do you have something that you could,
12 maybe, show me?

13 **MR. GRAY:**

14 Q. Sure. I'm not trying to trick you into
15 saying anything.

16 Dr. Williams, I'm going to hand you --
17 well, you already have the report of Dr. Elders, I
18 believe, sir. It's Exhibit 5.

19 A. Yes. I have it.

20 **MR. SASSER:**

21 What page?

22 **MR. GRAY:**

23 Oh, I'm sorry. Page 65.

24 Q. Down at the bottom, the last paragraph,
25 Dr. Williams, on Page 65 of Dr. Elders' report,

1 Brand preference data indicates that teens are
2 nearly three times more likely than adults to smoke
3 the most heavily advertised brands of cigarettes.

4 A. I see that statement.

5 Q. Okay. And you're aware that Dr. Elders
6 was the Surgeon General when the 1994 Surgeon
7 General's report regarding youth smoking was
8 promulgated? Are you aware of that, sir?

9 A. I believe that's correct.

10 Q. Have you looked at the data one way or
11 the other as to teenagers' brand preferences?

12 A. Sir, I have reviewed some information on
13 that, but I cannot recollect specifics from that
14 review at this time.

15 Q. Okay. How would you explain this
16 phenomena, Dr. Williams? Assuming that teens do --
17 that teens are nearly three times more likely than
18 adults to smoke the most heavily advertised brands
19 of cigarettes, why would that be?

20 **MR. SASSER:**

21 Objection to form.

22 A. Could you restate that question, please,
23 sir?

24 **MR. GRAY:**

25 Q. Dr. Elders states in her report that

1 teens are nearly three times more likely than adults
2 to smoke the most heavily advertised brands of
3 cigarettes. Do you have a professional opinion as
4 to why that is so?

5 **MR. SASSER:**

6 Objection.

7 Q. Assuming it is.

8 **MR. SASSER:**

9 Objection.

10 A. Sir, could you restate that in a form
11 that might make it a bit more understandable for me?
12 I'm looking at that statement.

13 **MR. GRAY:**

14 Q. Let's assume that Dr. Elders is correct.
15 And again, if she's not, she's not. But just for
16 purposes of our discussion, because you have told me
17 you're not -- well, let's just stop there. Let's
18 assume that's correct.

19 As a marketing expert, do you have an
20 opinion as to why teenagers are more likely to smoke
21 heavily advertised brands of cigarettes than adults?

22 **MR. SASSER:**

23 Objection.

24 **MR. GRAY:**

25 Q. If you don't, that's okay.

1 A. It is my opinion that consumers,
2 regardless of their age categories, adults or
3 teenagers, will be responsive to brands for multiple
4 reasons.

5 Q. And one of those reasons would be
6 advertising, correct, sir?

7 **MR. SASSE:**

8 Objection.

9 A. Consumers respond to brands in different
10 ways for different reasons. And those reasons are
11 given in the model of consumer decision making
12 processes which, I believe, is Exhibit 2. So the
13 preferences for certain brands would be very much
14 dependent on some of the variables in Exhibit 2.

15 **MR. GRAY:**

16 Q. Okay. We'll go to Exhibit 2, probably,
17 after the break.

18 On Page 66 the last paragraph which is in
19 the Summaries section, Dr. Elder states, The tobacco
20 industry advertises and markets to adolescents as
21 these young people are a strategic market for the
22 tobacco industry. Do you have an opinion either way
23 as to whether or not that statement is accurate?

24 A. Smoking is an adult custom and adult
25 behavior and should not be targeted to young kids.

1 But if that is the case, it doesn't matter because
2 advertising by a tobacco company is not going to get
3 or cause anyone to smoke.

4 In the maturity stage of the product life
5 cycle, which tobacco products are, you want people
6 that are already consuming the product to switch
7 from their brand to your brand. So the effect of an
8 ad, regardless of age, is not going to be to get
9 someone to start smoking a cigarette.

10 Q. Okay. You stated that smoking is an
11 adult custom. You would agree, though, that the
12 vast majority of smokers actually become addicted to
13 smoking as teenagers, wouldn't you, sir?

14 MR. SASSER:

15 Objection.

16 MR. DURHAM:

17 Objection.

18 A. Could you restate that, please?

19 MR. GRAY:

20 Q. Well, I will state the simpler question
21 first. Would you agree that the vast majority of
22 smokers begin smoking as teenagers?

23 MR. DURHAM:

24 Object to form.

25 MR. SASSER:

1 Objection.

2 A. People begin smoking for different
3 reasons at different times, and those reasons and
4 those times are not controlled by tobacco companies.

5 **MR. GRAY:**

6 Q. Are they affected by tobacco company
7 marketing campaigns?

8 A. Given that tobacco products are in the
9 maturity stage of the product life cycle, the
10 advertising is brand specific. Brand specific
11 advertising in the maturity stage focuses on brand
12 switching and brand loyalty.

13 Q. So let me go back, I guess, to the
14 original question. Do you know what percentage of
15 smokers begin smoking as teenagers?

16 A. I do not have a particular percentage in
17 mind as I sit here today.

18 Q. Do you know whether it's more or less
19 than 20 percent?

20 **MR. DURHAM:**

21 Object to the form.

22 A. Sir, as I sit here today, I cannot
23 respond in terms of a particular number. I do know
24 that people do begin smoking at different ages for
25 different reasons beyond the control of tobacco

1 companies.

2 **MR. GRAY:**

3 Q. I'm not asking for a specific number.
4 I'm certainly not trying to turn this into a memory
5 test, but do you know whether the majority of
6 smokers begin smoking during their teenage years?

7 **MR. DURHAM:**

8 Object to form.

9 **MR. SASSER:**

10 Objection.

11 A. Sir, I do not have a number in mind in
12 terms of the number of people that start smoking and
13 when they start. I am aware of the fact that people
14 do start at different ages and for a wide range of
15 reasons.

16 **MR. GRAY:**

17 Q. Don't most smokers start smoking as
18 teenagers, though?

19 **MR. SASSER:**

20 Object to the form of the question.

21 A. I know that people start smoking at
22 different ages for different reasons.

23 **MR. GRAY:**

24 Q. And you have no idea what percentage of
25 smokers begin smoking during their teenage years?

1 MR. DURHAM:

2 Object to the form of the question.

3 A. I don't have a number in mind, sir.

4 MR. GRAY:

5 Q. Do you have any idea?

6 A. I do know that people start at different
7 ages, at different age ranges, but I cannot sit here
8 today and give you a specific number.

9 Q. So if I were to tell you that only 10
10 percent of smokers begin as teenagers, that's just
11 as likely to you as the statement that 80 percent of
12 smokers begin smoking as teenagers?

13 A. I would have to review some documents,
14 sir. At this point, I just don't have a particular
15 number.

16 Q. I understand you don't have a particular
17 number. Do you have any range, any idea whatsoever?
18 It's okay if you haven't reviewed the documents.
19 You can just tell me that.

20 Do you have any idea what the range or
21 the percentage is age-wise for the number of smokers
22 after they begin smoking?

23 MR. SASSER:

24 Objection.

25 MR. DURHAM:

1 Object to form.

2 A. At this point, I do not have an idea, as
3 I sit here today.

4 **MR. GRAY:**

5 Q. Tell me whether or not you agree with
6 this statement: Realistically, if a tobacco company
7 is to survive and prosper over the long term, it
8 must get its share of the youth market.

9 **MR. SASSER:**

10 Objection.

11 A. Could you show me that, sir?

12 **MR. GRAY:**

13 Q. Sure. Actually, Dr. Glover and
14 Dr. Marshall's report on Page 6 -- I'm sorry --
15 Exhibit 6 and around Page 50. Page 54.

16 A. Page 54?

17 Q. Yes.

18 A. Let me get there. I see it.

19 Q. And that's our friend, Claude Teague,
20 again. That's a typo there. It says Charles
21 Teague. Do you know who Claude Teague is, sir,
22 other than seeing his name in this report?

23 A. I have seen the name in some other
24 reports that I have read.

25 Q. Now, when I read the quote, instead of

1 saying our company, I think I said, realistically,
2 if a tobacco company is to survive and prosper. In
3 general, do you think that if a tobacco company is
4 to survive in long-term it must get a share of the
5 youth market?

6 **MR. DURHAM:**

7 Objection.

8 **MR. SASSER:**

9 Objection.

10 A. To respond to that question, you would
11 have to put the whole memo or the whole document in
12 context and you need to know what was being said and
13 the audience and if actions were taken on that or if
14 this was just a document, research document, if
15 anything was ever implemented.

16 So there are a lot of things that I think
17 you would want to know. You would want to know the
18 definition of youth. Youth could very well be
19 someone that's 18 or 19. So there are a lot of
20 questions that I would love to have some response
21 to. And again, we don't know the intent of the
22 writer of that particular statement.

23 **MR. GRAY:**

24 Q. I'm not asking you at all whether or not
25 this statement means that R.J. Reynolds had any

1 intent. I'm not asking for an opinion as to what
2 R.J. Reynolds may have done as a result of this
3 memo. And it's a yes or no question.

4 Do you think that if a tobacco company is
5 to survive and prosper it must get its share of the
6 youth market?

7 **MR. DURHAM:**

8 Object to form.

9 **MR. SASSER:**

10 Objection.

11 **MR. GRAY:**

12 Q. Or any share of the youth market?

13 **MR. SASSER:**

14 Objection.

15 A. Well, I don't know the definition of
16 youth. But if you look at tobacco products being in
17 the maturity stage of the life cycle with switching
18 behavior being part of the characteristics of that
19 stage of the life cycle, if individuals, adult
20 smokers, switch from other brands to our brand,
21 that's enough to grow a market for quite some time.

22 So regardless of this statement, the
23 youth market -- even if it's 18 -- the youth market
24 is not really needed for the industry to grow. You
25 need for people to switch from another brand to our

1 brand. And if you look at percentages, or if you
2 look at what happens in any number of consumer
3 products companies that are in the maturity stage of
4 the life cycle, they are also interested in people
5 switching from Brand A to Brand B, and that's how
6 they intend to grow their business over time. So in
7 that regard, tobacco companies are no different.

8 **MR. GRAY:**

9 Q. But I believe you stated earlier you
10 don't know what the switching figures are for
11 tobacco brands?

12 A. I do not have a specific number in mind,
13 sir.

14 Q. Do you have any range of numbers in mind
15 for switching?

16 **MR. SASSER:**

17 Objection.

18 A. As I sit here at this point, I do not
19 have any numbers in mind.

20 **MR. GRAY:**

21 Q. Let's go to Page 52. The very bottom
22 there is a reference to a document, younger adult
23 smokers, strategies and opportunities.

24 A. I see that.

25 Q. And when you flip the next page, there is

1 a quote, The renewal of the market stems almost
2 entirely from 18-year old smokers. No more than 5
3 percent of smokers start after age 24. The brand
4 loyalty of 18-year old smokers far outweighs any
5 tendency to switch with age.

6 Now, as I read that quote, that's
7 inconsistent with what your understanding of the
8 importance of 18-year old smokers is to the tobacco
9 industry, correct, sir?

10 **MR. SASSER:**

11 Objection.

12 **MR. DURHAM:**

13 Object to the form.

14 A. Could you restate your question?

15 **MR. GRAY:**

16 Q. Do you agree or disagree with the two
17 statements that I just quoted from Page 53, or do
18 you have an opinion either way?

19 A. Are we looking at both of those together,
20 or just one separately?

21 Q. That's a good question. Let's go
22 straight to the second one. The brand loyalty of 18
23 year old smokers far outweighs any tendency to
24 switch with age.

25 Do you agree or disagree with that

1 statement in the context of cigarette use?

2 **MR. DURHAM:**

3 Object to form.

4 A. Could you restate that, please?

5 **MR. GRAY:**

6 Q. Sure. Let me back up just a little bit.
7 Do you know who Diane Burrows is?

8 A. I have seen that name in some material
9 that I read. I could not give you her job
10 description or her title.

11 Q. I represent to you that she wrote this
12 RJR report that I'm quoting from. Her report says,
13 The brand loyalty of 18-year old smokers far
14 outweighs any tendency to switch with age.

15 Do you have an opinion as to whether or
16 not that statement is accurate?

17 **MR. DURHAM:**

18 Objection.

19 A. I don't know anything about the research
20 or how it was done, so I don't know. I don't have
21 an answer in terms of whether this is right or
22 wrong.

23 **MR. GRAY:**

24 Maybe now would be a good time for a
25 break.

(A recess was taken.)

MR. GRAY:

Q. Good afternoon, Dr. Williams. One more question back to youth before we get to your report.

You're aware that there are predictors of smoking onset?

A. I am aware.

Q. Would you agree that overestimation of smoking prevalence is one of such predictors?

A. The primary predictors of smoking onset are parents, peers, rebellious attitudes, curiosity. Those are the primary influences with respect to smoking.

Q. Is overestimation of smoking prevalence a predictor in your opinion?

A. In my opinion, based on research that I've done, the primary influences in smoking onset are going to be peers, family, friends, curiosity and rebellion.

Q. Are those the only --

A. I would not say that those are the only ones, but those are the primary ones mentioned in all the credible studies that have been done.

Q. Do you have an opinion either way as to whether overestimation of smoking prevalence is a

1 predictor at all? I'm not asking if it's a primary
2 predictor because I think your answer is it's not.
3 Is it a predictor at all?

4 A. I do not know as I sit here at this
5 point.

6 Q. Let's turn to your report. And earlier
7 you directed me to Exhibit 2. And we can flip to
8 that. I think you reference Exhibit 2 on Page 2 of
9 your report, and I actually have a question about
10 something that's in that paragraph.

11 You say that consumer behavior is
12 complicated and driven by a multitude of interacting
13 factors that are not marketer controlled. Those
14 factors you're referring to, those are the factors
15 on Exhibit 2, correct?

16 A. The factors I referred to are included in
17 Exhibit 2.

18 Q. Okay. When you say these factors are not
19 marketer controlled, you would agree that these
20 factors can be marketer influenced, wouldn't you,
21 sir?

22 A. When consumers make choices about the
23 products to consume and the brands to consume, they
24 are going to be influenced by a wide range of
25 factors, some of which are given in Exhibit 2.

1 These are variables that people basically bring to
2 the store when they make the choice of picking up
3 Brand A versus Brand B.

4 Q. Okay. And advertising is not listed as
5 one of these factors on Exhibit 2; is that correct?

6 A. Advertising is not listed in Exhibit 2,
7 that is correct.

8 Q. So when a consumer comes to a store to
9 make a purchase decision, is it your expert opinion
10 that advertising has no influence on that consumer's
11 decision?

12 A. It is my opinion that in the maturity
13 stage of the product life cycle, advertising is
14 going to serve the role of reinforcing brand
15 loyalty, keeping them with the brand that they
16 currently have or encouraging them to switch to a
17 different brand or to encourage them to have your
18 brand as their second choice if their first choice
19 is not available.

20 Q. Okay. So Exhibit 2 really refers to
21 factors that affect the consumer decision making
22 process with respect to mature products; is that
23 accurate?

24 A. Exhibit 2 is designed to present factors
25 that influence decision making across different

1 stages of the life cycle.

2 But I understood the question to be a
3 particular ad in a store. And in that kind of
4 environment, in a retail environment, an ad is not
5 going to make a person buy a product. That ad for a
6 product that is in the maturity stage will get them
7 to continue buying the same one or to switch from
8 one to the other.

9 Q. Okay. Just so I'm clear, for a product
10 that's not in the maturity stage, you would agree
11 that an ad could influence a consumer to buy the
12 product itself as opposed to a specific brand?

13 MR. DURHAM:

14 Objection.

15 MR. SASSER:

16 Objection.

17 A. Could you restate that, please?

18 MR. GRAY:

19 Q. You talk about different stages of the
20 product life cycle.

21 A. That's correct.

22 Q. Okay. Let's go to, say, the growth
23 stage. You would agree, wouldn't you, sir, that in
24 the growth stage an ad, or ads, can influence a
25 consumer's decision of whether or not to buy a

1 product as opposed to the decision of whether or not
2 to buy a specific brand of product?

3 A. An ad can provide information. That
4 information can be factual. It can be other types
5 of information. How that consumer chooses to use
6 the information in that ad is going to be a function
7 of the variables that we have in Exhibit 2.

8 Q. Okay. So the ad -- and again we are
9 talking about the growth stage -- may have one
10 impact on one individual depending on that
11 individual's cultural and social factors, and that
12 ad may impact another individual in a different way
13 depending on that individual's factors, correct?

14 A. I'm saying that all consumers in all of
15 their choice decisions will be impacted by these
16 variables in different ways possibly at different
17 times.

18 Q. And in the growth stage of a product,
19 consumers will also be impacted by advertising,
20 correct?

21 A. The nature of the impact is going to vary
22 depending on the stage of the product life cycle.

23 Q. Okay. But in the growth stage, you would
24 agree that advertising does have an impact on
25 consumer decisions to purchase products, correct?

1 A. In the growth stage of the life cycle,
2 consumers are still going to make choices among
3 various brands. Because generally in the growth
4 stage, there will be different brands from which to
5 choose.

6 Q. How do you choose a brand without first
7 choosing to use the product?

8 A. The decision to use the product class is
9 going to be based on a lot of different things. It
10 will be based on some things that are listed here in
11 the model. It could be based on situations. The
12 decision to use a particular product class can be
13 based on a lot of different variables.

14 Q. And in the growth stage, isn't it true
15 that advertising can be one of those influences on
16 the decision to use a product class?

17 A. The product class is primarily the focus
18 is on stimulating primary demand of the entire
19 product class initially, and that's during the
20 introductory stage of the product life cycle. As
21 you move through the growth stage, you're looking at
22 selective demand stimulation and you're comparing
23 different brands.

24 Q. You say the product class is a factor.
25 Isn't advertising a factor at the introductory or

1 pioneering stage in causing people to use a
2 particular product class?

3 A. In the introductory stage, advertising
4 can provide information about the existence of a
5 particular product class. If you're looking at a
6 brand new product, a completely new product that
7 consumers are unaware of, during the introductory
8 stage information about what the product is and what
9 it will do is important because you basically have
10 just that one brand.

11 If you looked at DVDs, when that started
12 people had to be -- they had to have explained to
13 them what a DVD was and how it worked and how the
14 system worked. So at the very beginning in that
15 introductory stage, the focus is on providing
16 information about what the product will do as
17 opposed to encouraging brand preference.

18 Q. So it's your opinion that once a product
19 is out of this introductory stage, advertising has
20 no effect or influence on consumers' decisions
21 whether or not to use that product class?

22 MR. DURHAM:

23 Objection.

24 MR. SASSER:

25 Objection.

1 A. It is my opinion that when you move
2 beyond the introductory stage into the growth stage,
3 you have different brands entering the marketplace,
4 and consumers begin to make choices among different
5 brands. And in that choice process, they can use
6 information from various ads.

7 **MR. GRAZ.**

8 Q. I'll ask the question again. Does
9 advertising have any influence on consumers'
10 decisions to use a product class after the
11 introductory stage of a product?

12 A. Consumers will enter the market for a
13 particular product at different times for different
14 reasons. Again, those reasons will vary. And the
15 model in Exhibit 2 will provide some indication of
16 the different influencing factors that will
17 encourage them or that will influence their
18 consumption behavior.

19 Q. Is advertising one of those factors that
20 will influence consumption behavior?

21 A. Advertising will provide information in
22 the introductory stage as well as the growth stage
23 of a product life cycle. So advertising can provide
24 information. How that information is used in the
25 introductory stage and the growth stage will vary

1 based on the factors in this model.

2 Q. I'm not asking you to tell me that every
3 single consumer responds in the same way. I want to
4 know, at least for some consumers, during the growth
5 stage of a product is it possible for advertising
6 to be influential in that consumer's decision to use
7 a product class? For some consumers, is it
8 possible?

9 A. As we look at the growth stage and moving
10 into the maturity stage of life cycle, consumers are
11 looking at alternative brands. They already know
12 about the product class. They are very interested
13 in particular brands. They have the knowledge of
14 the product class and what the product class will do
15 for them.

16 Q. Is that yes or no?

17 **MR. SASSER:**

18 Objection.

19 **MR. GRAY:**

20 I can read the question back.

21 **MR. SASSER:**

22 You need to read the answer back.

23 **MR. GRAY:**

24 Okay. Will you read the question,
25 please?

(Whereupon court reporter read back
the last question and answer.)

THE WITNESS:

A. Would you restate your question, please?

MR. GRAY:

Q. During the growth stage of a product, is it possible for advertising to influence some consumers' decisions whether or not to use the product class?

A. During the growth stage of the product life cycle, generally there are multiple brands available from which consumers can select. They already have an understanding and awareness and knowledge of what the product class will do. At this point, they are looking at choices between or among the options that exist in the marketplace.

Q. I'll ask it again. Is it possible for some consumers to be influenced in their decision of whether or not to use a product class by advertising during the growth stage of a product? Is it possible?

A. Advertising will provide a lot of information. And how consumers use that information and process that information is going to vary based on these factors. So different consumers may use

1 these variables in different ways to act upon the ad
2 that they see.

3 Someone can read an ad in a magazine or
4 they can see an ad on television and get
5 information. And how they choose to respond or to
6 use that information is going to be a function of
7 the variables mentioned in the model on Exhibit 2.

8 Q. And one possible response is the decision
9 is made to smoke cigarettes, correct?

10 MR. DURHAM:

11 Object to the form.

12 MR. SASSER:

13 Objection.

14 MR. DURHAM:

15 I thought we were talking about the
16 growth stage.

17 MR. GRAY:

18 We are.

19 Q. Can a non-smoker be influenced by
20 advertising in his or her decision to smoke during
21 the growth stage of the product life cycle?

22 A. Sir, cigarettes are already in the
23 maturity stage of the life cycle, and they have been
24 in the maturity stage for quite some time. So the
25 real concentration is on the brand as opposed to the

1 product category.

2 Q. How long have cigarettes been in the
3 mature stage?

4 A. At this point, I would say that
5 cigarettes have been in the maturity stage for
6 probably since the 1920s.

7 Q. Since the '20s.

8 A. And that's a ballpark estimate.

9 Q. What literature -- well, scratch that.
10 How do you determine when a product has reached the
11 maturity stage?

12 A. There is no set amount of time for a
13 product to be in a particular stage. But in the
14 maturity stage, there is generally intense
15 competition. There are a number of new brands
16 introduced. There are a number of brand
17 adjustments, the addition of brand features. Those
18 are some of the usual indicators of the maturity
19 stage of the life cycle.

20 Q. Do you know how many new brands,
21 cigarette brands, were introduced in the '20s?

22 A. Sir, at this point, I do not know.

23 Q. Have you done any research on that?

24 A. I have reviewed a lot of documents
25 concerning cigarettes in this area, but I cannot

1 give you a response to that question.

2 Q. Are those documents listed on your
3 reliance list?

4 A. In addition to the documents here, I have
5 reviewed the various company documents as well. I
6 reviewed different documents.

7 Q. Didn't you say earlier, though, that the
8 documents that form the basis of your opinion you're
9 going to give in this case are found on your
10 reliance list?

11 A. They are found on this list in
12 conjunction with my knowledge of general marketing.
13 And my knowledge of general marketing will lead me
14 to believe, and to base my opinion on, the fact that
15 cigarettes are in the maturity stage.

16 Q. I want to be real clear on this. Have
17 you reviewed any internal tobacco company documents
18 that form the basis of your opinions in this case?

19 A. I have reviewed documents, but those
20 documents did not influence my opinion in terms of
21 this particular case.

22 Q. Including your opinion that cigarettes
23 are a mature product, correct?

24 A. My opinion that cigarettes are a mature
25 product was formed based on my knowledge of general

1 marketing and what I've reviewed.

2 Q. Okay. And you talk about -- I wrote
3 down, I guess, three different characteristics of a
4 product in the mature stage. And one of those
5 characteristics was it was a time period when many
6 new brands were introduced; is that fair?

7 A. That's one characteristic.

8 Q. Have you done any research for any time
9 period as to the number of cigarette brands that
10 have been introduced during any time period?

11 A. Sir, I cannot sit here and tell you a
12 number of brands that were introduced at any period
13 of time.

14 Q. I understand. It's not a memory test.
15 I'm not asking you for the exact number. I'm asking
16 you have you done any research of that?

17 A. I reviewed just a lot of -- I have
18 reviewed a lot of things, a lot of information. But
19 I cannot sit here and tell you that I can give you
20 that information today.

21 Q. Have you done any research on that
22 question, sir?

23 A. On the number of new cigarette brands
24 introduced at given periods of time?

25 Q. Yes, sir.

1 A. I have looked at a number of different
2 ads. I have looked at a lot of different things,
3 but I can't give you a number.

4 Q. Have you done any research on the number
5 of brands introduced at any given time?

6 A. Sir, as I sit here today, I cannot give
7 you a number.

8 Q. Sir, as I sit here today, I'm going to
9 ask you this question until you give an answer.
10 Have you done any research on the number
11 of brands introduced at any point in time? I
12 understand you can't give me the number. I think
13 that's an unfair question for me to treat this as a
14 memory test, and I'll make that same objection next
15 week when I'm defending depositions. I want to know
16 if you have done any research on this question?

17 A. I may have seen some material on that,
18 but I can't recollect that as we sit here.

19 Q. Is that material listed on your reliance
20 list?

21 A. As I sit here at this point, I do not
22 know. I cannot respond.

23 Q. Let's go to the other factors. Intense
24 competition. Have you done any research as to the
25 intensity of the competition in the cigarette

1 industry at any time?

2 A. Just by reading and knowing the general
3 marketing literature and looking at a number of
4 things related to the tobacco industry, I know that
5 it is in the maturity stage, and I do know that
6 intensity of competition is one factor that
7 characterizes that particular stage of the life
8 cycle.

9 Q. What are the number of things you have
10 looked at in relation to the industry that support
11 that opinion?

12 **MR. SASSEN:**

13 Objection. Could you clarify, Tim, what
14 you're referring to?

15 **MR. GRAY:**

16 That's a fair objection.

17 Q. What have you looked at that form the
18 basis of your opinion that cigarettes are currently
19 in a stage of intense competition?

20 A. Sir, as I indicated, I have read a lot of
21 different material, and I cannot point to a
22 particular reference that I can give you. But it is
23 my opinion today that cigarettes are in the maturity
24 stage and that it's certainly characterized by
25 intense competition.

1 Q. Is there anything on your reference list
2 that you've looked at that forms the basis of that
3 opinion or that assists you in the formation of that
4 opinion, sir?

5 A. As I look today, I am not certain. I
6 cannot respond.

7 Q. Have you done any historical analysis of
8 the cigarette industry to determine at any point in
9 time if there was intense competition?

10 A. I'm not a historian, but I have reviewed
11 ads from different time periods.

12 Q. And were those ads helpful in the
13 formation of your opinion that there is intense
14 competition in the cigarette industry?

15 A. Those ads indicated a number of different
16 brands of cigarettes that were available, but they
17 may not have indicated all the brands that were
18 available at any given one time.

19 Q. Are you relying on any of those ads as
20 part of your opinion that cigarettes have been a
21 mature product since the '20s?

22 A. Sir, my opinion for this is based on, not
23 just what's on the reliance list, but just my
24 knowledge of marketing and different industries.
25 Whether I have reviewed industry specific

1 information or not, just general marketing
2 knowledge.

3 Q. I understand you bring your general
4 marketing knowledge to the table. When you have
5 reviewed cigarette ads, were you doing that in
6 preparation or in connection with your testimony in
7 this case?

8 A. When I reviewed the cigarette ads, that
9 was in terms of my overall ongoing research.

10 Q. Was it in connection with this case?

11 A. The review of those ads was part of my
12 overall preparation for my involvement in various
13 tobacco areas.

14 Q. Other than your involvement with tobacco
15 litigation, have you ever done any research of the
16 tobacco market?

17 A. I have not.

18 Q. Okay. So my question is: Should there
19 be some ads listed on this list?

20 **MR. SASSER:**

21 Tim, let me say that that's a reliance
22 list. It's not everything that he reviewed.

23 **MR. GRAY:**

24 I understand.

25 **MR. SASSER:**

1 Those are the documents that he has
2 selected that supports his opinion.

3 **MR. GRAY:**

4 Q. And I have asked the question what
5 documents supports your opinion that cigarettes have
6 been -- cigarette brands have been in intense
7 competition with one another since the 1920s? Is
8 there anything on this list that supports that
9 opinion?

10 A. My general knowledge of marketing and
11 looking at a lot of different industries over time
12 would lead me to believe that. Whether it's the
13 cigarette industry or the soap industry, many of the
14 characteristics are the same.

15 Q. But you can't point to anything on your
16 reliance list?

17 A. As I sit here today, I cannot point to
18 one reference.

19 Q. Okay. What about the third factor you've
20 listed, additional brand features? Did I say that
21 right?

22 A. Yes.

23 Q. When in the product life cycle are brand
24 features introduced? Is that during the growth
25 stage?

1 A. Many new brand features are introduced
2 during the maturity stage. The frequency of brand
3 features being introduced is greater during the
4 maturity stage of the product life cycle. And that
5 is, in part, due to the increased competitive
6 intensity.

7 Q. Okay. What cigarette brand features have
8 been introduced during the maturity stage?

9 A. A brand feature in cigarettes could be a
10 change in the length. It could be a change in any
11 aspect of a particular brand.

12 Q. Have you done any historical analysis as
13 to when various brand features were introduced with
14 respect to cigarettes?

15 A. I'm not a historian, and I can't sit here
16 and tell you when a particular brand feature was
17 introduced. But in my general knowledge of
18 marketing, I know that during the maturity stage of
19 the life cycle, the frequency of brand changes and
20 brand feature introductions, the frequency is much
21 higher than at other stages. And that's going to be
22 true, again, with this industry as well as other
23 consumer products as well.

24 Q. I'm trying to understand. What is the
25 basis for your statement earlier that cigarettes

1 have been a mature product since the '20s? What
2 historical analysis have you done that allows you to
3 pinpoint that decade?

4 A. Well, I have done a tremendous amount of
5 reading. And if you just look at this industry, and
6 if you look at the nature of competition among the
7 brands and you compare that to competition within
8 other categories of consumer products that are in
9 the maturity stage, these characteristics are
10 certainly no different.

11 Q. So the answer is, no, you haven't done
12 any historical analysis to support that opinion?

13 MR. SASSER:

14 Objection.

15 A. I'm not a historian, but I am aware of
16 the fact that there are a number of brands around
17 and there have been a number of brands of cigarettes
18 around for quite some time.

19 MR. GRAY:

20 Q. And what is the basis for that opinion?

21 A. Sir, I have reviewed a number of ads and
22 just general observation as a marketing person
23 looking at various industries over the years.

24 MR. GRAY:

25 We can work this out later. To the

1 extent there are ads that support that opinion, I
2 would like to see them. If they are not supporting
3 the opinion, then y'all haven't turned them over and
4 they are what they are.

5 Q. So let me recap.

6 You have done no research of the number
7 of brands that were introduced in any given decade,
8 correct?

9 **MR. SASSER:**

10 Objection.

11 A. Sir, I cannot give you a number in terms
12 of the brands that were introduced in a given
13 decade. I am sharing the opinion that there have
14 been a number of brands of cigarettes out for quite
15 some time. I can't give you a number. But those
16 characteristics lead me to believe that cigarettes
17 are in the mature stage of the life cycle.

18 **MR. GRAY:**

19 Q. But you really have no basis for your
20 opinion that they have been in the mature stages
21 since the '20s, do you, sir?

22 **MR. SASSER:**

23 Objection.

24 A. Sir, I am aware of the fact that there
25 have been a number of brands of cigarettes available

1 for quite some time from the '20s and beyond. But
2 I can't give you a specific number in terms of
3 introductions of new brands from that point forward.

4 **MR. GRAY:**

5 Q. So if I could show you that actually
6 there were no more brands introduced in a decade
7 later than the '20s, that would effect your opinion
8 as to when, if ever, tobacco -- when, if ever,
9 cigarettes became a mature product, correct?

10 **MR. DURHAM:**

11 Object to form.

12 **MR. SASSER:**

13 Objection.

14 A. Sir, when you look at the stages of the
15 life cycle, you go from introduction to growth to
16 maturity. It's difficult to pick a single year.
17 You can generally pick a timeframe. It's difficult
18 to pinpoint a specific time, one year in time. But
19 there is a general timeframe when these kinds of
20 market behaviors occur that marketers will say, this
21 is the growth stage, this is the maturity stage, or
22 this is the decline stage.

23 **MR. GRAY:**

24 Q. Would you agree that the growth stage
25 would be characterized by a period during which

1 growth, let's say, exceeds 10 percent in a 10 year
2 period? Would that product be in the growth stage?

3 **MR. DURHAM:**

4 Object to form.

5 A. Could you rephrase that.

6 **MR. GRAY:**

7 Q. If the sales of a product in a decade are
8 increased by, say, 10 percent, wouldn't you agree
9 that that product is still in the growth stage
10 during that decade?

11 **MR. DURHAM:**

12 Objection.

13 A. There is no set period of time for a
14 product to be in any given category of their life
15 cycle. You can't say that a product is going to be
16 in the cycle in the introductory stage for "X"
17 number of months or years or in the next stage for
18 "X" number of years. There is no set defined time.

19 You look at a group of characteristics, a
20 group of market characteristics, a group of market
21 behaviors that will lead one to believe that this is
22 one stage versus another stage or that the product
23 is moving from one to the other.

24 **MR. GRAY:**

25 Q. So you have no opinion either way as to

1 whether growth in excess of 10 percent in a given
2 decade impacts your characterization of that product
3 as being in the growth stage?

4 **MR. SASSER:**

5 Objection.

6 **MR. DURHAM:**

7 Object to form.

8 A. My opinion is that there is no specified
9 time in a particular product life cycle stage; that
10 some products are in stages much longer than others,
11 and that's going to vary for a lot of different
12 reasons.

13 **MR. GRAY:**

14 Q. Is there anything in the public's
15 literature that you have read that would indicate
16 that a product whose sales grow by more than 10
17 percent in a given decade is not in the growth
18 stage?

19 A. As I sit here today, I'm not familiar
20 with that.

21 Q. Let me back out of this stage of
22 discussion for just a second.

23 Back on Page 2, the first full paragraph
24 of your report, you say that, Any potential
25 influence of advertising -- and again we are talking

1 about advertising here and not marketing, correct,
2 sir?

3 A. That is correct.

4 Q. -- is further negated by the
5 ever-increasing volume of advertising clutter. Can
6 you define clutter?

7 A. Clutter, as an advertising term, refers
8 to the large quantity or the large volume of
9 messages that bombard consumers daily and compete
10 for their attention.

11 Q. Okay. You cite some articles from the
12 70s in this discussion of clutter. Is clutter
13 still a term that's used in advertising literature?

14 A. Yes.

15 Q. Isn't one way to break through clutter to
16 spend more money advertising?

17 A. Companies, in some cases, will spend more
18 money developing ads in a way to break through the
19 clutter.

20 Q. Okay. And isn't another thing companies
21 may do to break through advertising clutter, shift
22 expenditures to other marketing methods?

23 A. Companies will allocate dollars to
24 various aspects of marketing for different purposes
25 depending upon their goals.

1 Q. If one goal is to break through the
2 clutter in advertising, wouldn't a way to achieve
3 that goal be to shift dollars from advertising to
4 other forms of marketing such as promotion?

5 MR. DURHAM:

6 Object to the form.

7 MR. GRAY:

8 Q. Other forms of marketing such as
9 promotion?

10 A. In developing a promotional mix as part
11 of the marketing mix, companies will consider the
12 full range of variables and factors that come under
13 promotion that will allow them to best communicate
14 their message to their stakeholders.

15 Q. Okay. Going down that same paragraph a
16 little bit. For advertising to break through the
17 clutter, it must first be relevant to the
18 individual. Cigarettes ads are primarily relevant
19 to smokers. You say, primarily relevant. Would you
20 agree that cigarette ads are relevant to non-smokers
21 to some extent?

22 A. Cigarette ads are primarily relevant to
23 smokers.

24 Q. Are they relevant at all to non-smokers?

25 A. Individuals may see the ads, but they

1 aren't relevant if they aren't smokers. I will see
2 ads for things, but if they are not of interest to
3 me, then they are irrelevant.

4 Q. If the product isn't of interest to you?

5 A. If the product isn't.

6 Q. Okay. Well, what if I see an ad for a
7 product I don't use, but I think the ad is funny,
8 wouldn't the ad be relevant to me?

9 A. The ad has gotten your attention, and the
10 ad has focused your attention on it. But it doesn't
11 have to be relevant from the standpoint of you
12 buying that particular product to satisfy some
13 expectations or desires that you have.

14 Q. Let's go back to the product life cycle.
15 Still, I guess, on Page 2. Your report says in the
16 second sentence of the second full paragraph of Page
17 2. In the introductory or pioneering stage of the
18 product life cycle, advertising and promotion are
19 designed to create awareness of the functions of the
20 product and to generate interest in the product
21 class.

22 What is the difference, in your opinion,
23 Dr. Williams, between an ad for cigarettes in the
24 introductory stage and an ad for cigarettes in a
25 growth stage? I'm not talking about how the

1 consumer perceives it. I'm talking about the ad
2 itself. How is the ad different?

3 A. In the introductory stage of the product
4 life cycle, the ad is going to be focused on the
5 product class. An ad for a product in the maturity
6 stage will focus on the brand.

7 Q. Is it your opinion that in the pioneering
8 or introductory stage of cigarettes, ads focused on
9 the product class as opposed to the brand?

10 A. It is my opinion that in the introductory
11 stage of the life cycle, ads and other forms of
12 marketing communication focus on the actual product
13 category and not the brand. Because at that stage,
14 there is only one brand. And when you have a
15 product class, you introduce people to the concept
16 of what that product will do. And in the maturity
17 stage, there are different brands from which to
18 select.

19 Q. Have you reviewed any cigarette ads that
20 support your opinion that cigarettes are in the
21 mature stage?

22 A. Sir, if you just look at -- when I looked
23 at the number of brands -- and again, I'm not a
24 historian -- but if you will just look at the number
25 of brands, and if you look at what happens during

1 the maturity stage of the product life cycle, the
2 market behavior here is no different than the
3 behavior of other consumer products.

4 Q. Wouldn't one piece of information you
5 would want to communicate about your product during
6 the pioneering stage in the growth stage be
7 information about the safety of a product?

8 A. The choice of the information to convey
9 in an advertisement during the introductory stage is going to
10 be a function of the kind of message that the
11 marketer would like to convey for a brand new
12 product. And different marketers would convey
13 different things for different reasons. But since
14 the product class is new, it would be important to
15 share a wide range of information to consumers.

16 Q. But you can't identify any ads from the
17 pioneering stage of cigarettes?

18 A. As I sit here today, I do not have an
19 answer for you on that question.

20 Q. You can't tell me if cigarette ads in the
21 '20s were any different from cigarette ads today,
22 can you, sir?

23 A. I can't sit here and tell you that I have
24 seen an ad that just said, smoke cigarettes and not
25 smoke a particular brand. Ads for the introductory

1 stage of the product life cycle will focus on the
2 product class; drink milk, eat beef, eat pork. As I
3 sit here, I cannot say that I have seen an ad that
4 said, smoke cigarettes. The ads that I have seen,
5 even as just an observer, focused on a particular
6 brand.

7 (Exhibit 7 was marked.)

8 **MR. GRAY:**

9 Q. I have marked an ad as Exhibit 7. I have
10 got a copy, but it didn't copy very well.

11 A. Sir, this is a Lucky Strike ad. And on
12 its face, it says, When tempted, reach for a Lucky
13 instead. It's toasted. Avoid that future shadow.
14 And I can describe the picture. It shows a
15 photograph of a woman, and then behind her is,
16 essentially, the image of a woman who has put on
17 some weight. Is that a fair characterization?

18 **MR. SASSER:**

19 I think the exhibit, as you have got it
20 marked, will certainly be clear to anyone reading
21 the transcript as to what it says.

22 **MR. GRAY:**

23 Q. Let me ask you: Do you think this ad may
24 create the impression in women smokers that smoking
25 cigarettes is an effective method of weight control?

1 MR. DURHAM:

2 Object to the form.

3 MR. SASSER:

4 Objection to the form.

5 A. Could you restate that, please? Could
6 you restate that question, please?

7 MR. GRAY:

8 Q. What do you think they mean by, when
9 tempted, reach for a Lucky instead? Tempted for
10 what? What do you think our good friends at
11 American Tobacco are trying to say there?

12 A. Again, there could be different
13 interpretations of this, but this ad is brand
14 specific.

15 Q. It is.

16 A. It says Lucky Strike, and this is a brand
17 of cigarette, as I indicated. This is not saying
18 that you should just smoke cigarettes, but just
19 smoke this particular brand. So this is very, very
20 brand specific.

21 Q. Now, wouldn't you agree, though, that the
22 clear import of this ad is the suggestion that
23 instead of eating something, women should reach for
24 a cigarette instead? And for now, I will say a
25 Lucky Strike cigarette. Isn't that the clear import

1 of this ad?

2 A. One could get that interpretation.

3 That's a possible interpretation.

4 Q. But you say this is specifically an ad
5 for Lucky Strike, correct?

6 A. That's the brand that's indicated in the
7 ad, sir.

8 Q. Doesn't the ad say, though, We do not
9 represent that smoking Lucky Strike -- and Lucky
10 Strike is underlined -- cigarettes will bring modern
11 figures or cause the reduction of fat?

12 A. I see that.

13 Q. So it appears to me that American Tobacco
14 isn't trying to set Lucky Strike apart as a specific
15 brand that has certain health effects, is it?

16 MR. SASSER:

17 Objection.

18 MR. DURHAM:

19 Object to form.

20 MR. GRAY:

21 Q. That has certain weight control effects?

22 A. Lucky Strike is represented in this ad,
23 and the interest is in selling Lucky Strikes.

24 MR. DURHAM:

25 Tim, just for the record, do you know

1 what publications it appeared in or when it
2 appeared? It doesn't seem to be dated or have any
3 indication of publication on it.

4 **MR. GRAY:**

5 I do.

6 **MR. DURHAM:**

7 Can you share that information? I'm
8 sorry to intrude on your deposition. If it's
9 appropriate, put it in the record. If it's not,
10 then that's fine, too. I don't know whether it is
11 or not.

12 **MR. GRAY:**

13 I don't think it's necessary for the
14 record. I will be glad to share that with you.

15 (Exhibit 8 was marked.)

16 **MR. GRAY:**

17 Q. I have marked another ad as Exhibit 8.
18 Dr. Williams, I have handed you Exhibit 8, which
19 everyone may agree, speaks for itself, but actually,
20 it's a professional holding a pack of cigarettes.
21 Can you tell me what type of professional you think
22 that person is that's holding that pack of
23 cigarettes?

24 A. That person appears to be a medical
25 professional or a health care professional.

1 Q. I agree. Is it possible that
2 R.J. Reynolds ran an ad with a health care
3 professional holding a pack of cigarettes in order
4 to portray an image that smoking is a safe
5 experience?

6 MR. DURHAM:

7 Objection.

8 MR. GRAY:

9 Q. Is it possible?

10 A. An ad may have run showing a person that
11 appears to be a medical professional, but the intent
12 of the ad, I do not know.

13 Q. What about the impact of the ad? Do you
14 have any opinion as to whether or not a reasonable
15 consumer might think that doctors think it's okay to
16 smoke Camel cigarettes?

17 MR. SASSER:

18 Objection.

19 A. If we look at Exhibit 2 the model of
20 consumer decision making processes and how consumers
21 decide to select a particular brand, they come to
22 that conclusion for a lot of different reasons. So
23 consumers could get different opinions about
24 observing this ad with this particular person and
25 this brand.

1 Q. Okay. How about that one, which I will
2 mark as Exhibit 9.

3 (Exhibit 9 was marked.)

4 **MR. GRAY:**

5 Q. This one says, More doctors smoke Camels
6 than any other cigarette, doesn't it, sir?

7 A. I see that at the bottom, yes.

8 Q. Is it possible that a consumer looking at
9 this ad might feel like he is getting information
10 about the product, which is cigarettes?

11 A. I see the information at the bottom, more
12 doctors smoke Camels, and the exact question again
13 was?

14 Q. Do you think this ad conveys any
15 information about the product itself, cigarettes, or
16 do you think this ad is limited solely to the brand
17 Camel?

18 A. The Camel logo is featured there, so it
19 would appear that this is an ad that is, again,
20 brand specific.

21 Q. And you don't think it says anything
22 about the product itself to a reasonable consumer
23 looking at the ad?

24 **MR. SASSER:**

25 Objection.

1 MR. DURHAM:

2 Objection.

3 A. Sir, I see the brand name Camel, and I
4 would guess that this is a brand specific ad.

5 MR. GRAY:

6 Q. So the answer is, no, you don't think it
7 really provides information about the product
8 itself?

9 A. This particular ad would provide
10 information about Camels because it's a Camel brand
11 ad.

12 Q. Sir, at the top of Page 3, you say, There
13 is no evidence that advertising causes consumers to
14 use mature products in the first instance. And you
15 use the words, "cause consumers." Would you agree
16 that advertising can be an influence in a consumer's
17 decision to use mature products?

18 A. Consumers make choices for a lot of
19 different reasons, and in the maturity stage of a
20 product life cycle, an ad will encourage a person to
21 continue using the same brand or to switch to a
22 different brand.

23 Q. But will not have an impact on the
24 decision to use the product in the first instance,
25 correct?

1 A. Advertising during the maturity stage
2 will encourage people to stay with the same brand,
3 to switch to a different brand, or to select my
4 brand as the alternate brand, the Number 2 choice,
5 if the first brand is not available. Those are the
6 primary things that an ad will do during the
7 maturity stage.

8 Q. Is it possible that an ad will influence
9 a smoker's decision to keep using the product
10 itself?

11 A. An ad during the maturity stage of the
12 life cycle encourages brand loyalty. And brand
13 loyalty, in part, by definition, is that you're
14 buying the same brand over and over again.

15 Q. So there is some element of reinforcing
16 smoking behavior?

17 **MR. SASSER:**

18 Objection.

19 **MR. DURHAM:**

20 Object to the form.

21 **MR. GRAY:**

22 Q. In cigarette advertising, the mature
23 stage.

24 A. Marketers of mature products are very
25 interested in brand loyalty if it's ice cream or

1 soap or cologne. So brand loyalty in and of itself
2 is one of the things that you would like to focus on
3 as a marketer in the product of a mature stage.

4 Q. Do you know whether cigarette companies
5 have ever for any company, any brand, tried to
6 create brand loyalty by trying to convince users of
7 its brand that its brand is safer than other brands?

8 **MR. SASSER:**

9 Objection.

10 A. Companies in developing marketing and
11 advertising strategies will develop different
12 campaigns to achieve different goals and objectives.
13 And at this particular juncture in the maturity
14 stage, we would like for people to stay with our
15 brand. There are different ways that marketers
16 might use to encourage people to stay with the same
17 brand.

18 **MR. GRAY:**

19 Q. But if a marketer feels like the user of
20 this product is going to quit using this product,
21 wouldn't that marketer, perhaps, engage in efforts
22 to keep that user using the product class?

23 A. A marketer of a product in the maturity
24 stage of the life cycle is very interested in
25 individuals choosing their brand. They are very

1 interested in people choosing their brand and
2 staying with that brand over a very long period of
3 time. So there will be marketing strategies that
4 will reinforce brand loyalty.

5 Q. What about marketing strategies to
6 reinforce the decision to continue to smoke, period?
7 Do you have any opinion as to whether tobacco
8 companies ever engage in such marketing strategies?

9 MR. SASSER:

10 Objection.

11 A. My opinion is that the advertising
12 campaigns for the cigarette companies have focused
13 on brand loyalty, switching behavior and the
14 development of alternate brands.

15 MR. GRAY:

16 Q. And what documents have you reviewed that
17 form the basis of those opinions?

18 A. We know that cigarettes are in the mature
19 stages of the life cycle. And by virtue of being in
20 that stage, those are the goals of advertising for
21 consumer products companies across product
22 categories if they are in that stage of the life
23 cycle.

24 Q. So by definition, if the product is in
25 that stage of the life cycle, encouraging switching

1 loyalty and alternate brands must, by definition, be
2 what tobacco companies are doing in their market; is
3 that your opinion?

4 **MR. DURHAM:**

5 Object to the form.

6 **MR. SASSER:**

7 Objection.

8 A. It is my opinion that in this maturity
9 stage, you are very interested in brand loyalty.
10 You are very interested in people switching that are
11 already smoking from Brand A to Brand B or to choose
12 your brand as their next brand if their favorite
13 brand is not available. That's my opinion.

14 **MR. GRAY:**

15 Q. How would advertising information
16 directed to retain a current customer be different
17 than advertising promotion directed at attracting
18 new users to the product?

19 A. New users to the product class will come
20 from non-marketer dominated factors. If you look at
21 Exhibit 2, the model, there are a lot of different
22 reasons that people enter the marketplace for
23 particular products; a change in lifestyle, a change
24 in situation, a change in jobs. Any number of
25 changes in the variables that we have listed there

1 can cause someone to buy a particular product --
2 class of products.

3 Q. Your report says -- if I can find the
4 page. On Page 3 at the bottom of the section on
5 Influencing our Consumer Behavior, you say, It is
6 also noteworthy that advertising themes and images
7 utilized in cigarette ads are similarly found in ads
8 for computers, perfume, food and the like. What
9 things do you find in cigarette ads that are also
10 found in computer ads?

11 A. Many ads for consumer products that are
12 in the maturity stage of the life cycle will have
13 lifestyle ads. They will show certain themes. So
14 it's very important to understand that the themes
15 and the images that are shown here are not atypical
16 in terms of themes that it demonstrated for other
17 consumer packaged goods.

18 Q. Can you point to a single ad for a
19 computer that uses a theme or image that is also
20 used in a cigarette ad, any cigarette ad, any
21 company, any brand?

22 A. As we sit here today, I cannot think of
23 one computer ad. But if you look at many, many
24 consumer products, the basic themes will be very
25 similar across product groups.

1 Q. Would that be the same for perfume and
2 food?

3 A. That is correct. It would be the same.

4 MR. GRAY:

5 Why don't we take a quick break?

6 (A short break was taken.)

7 MR. GRAY:

8 Q. Dr. Williams, we have discussed the
9 mature stage of a product. Is it possible for a
10 product to be mature with respect to one segment of
11 a market but not be mature with respect to another
12 segment of a market?

13 A. A product is going to be in the maturity
14 stage and will demonstrate the characteristics of
15 that maturity stage, but it is also possible for
16 individuals to start using a particular brand of the
17 product that was in the maturity stage. But their
18 coming to use the product class for the first time
19 is not going to be a function of advertising.

20 Q. Could it be a function of marketing?

21 A. It's going to be a function of the
22 variables in the model that we discussed in Exhibit
23 2. Those variables, those factors, will influence
24 consumer choice, will help influence consumer
25 choice, in terms of both brands and products.

1 Q. What if you have one segment of the
2 population -- and let's take cigarettes as an
3 example -- where smoking rates for one segment are
4 much, much lower than smoking rates for another
5 segment. Isn't it true that with respect to the
6 segment with low smoking rates, with respect to that
7 segment, the product is not in the mature stage?

8 A. The product itself is still in the
9 maturity stage of the product life cycle. There may
10 be different rates of usage across market segments
11 or customer groups, but the product itself is still
12 in the maturity stage of the life cycle.

13 Q. Have you done any research or analysis as
14 to whether targeting specific brands of cigarettes
15 to specific market segments had the effect of
16 increasing cigarette consumption for that market
17 segment?

18 A. I have reviewed the literature on market
19 segmentation, and I am aware of market segmentation
20 in terms of tobacco products.

21 Q. But you haven't done any research as to
22 the question I asked you?

23 A. I do know that tobacco companies have
24 engaged in market segmentation based on the same
25 variables that other consumer product firms used to

1 segment their markets.

2 Q. Let's talk about the similarities between
3 cigarettes, toothpaste, and soap on Page 2. You say
4 those are all three in the maturity stage. Aren't
5 there significant differences between these
6 products, though?

7 A. These are all very common consumer
8 product categories with a number of different brands
9 in each one of those product categories.

10 Q. Do you know anybody that doesn't use
11 soap?

12 A. Personally, I don't.

13 Q. Do you know anybody that doesn't use
14 toothpaste?

15 A. Personally, I do not.

16 Q. Do you know anybody that doesn't smoke?

17 A. I do.

18 Q. Do you know whether soap kills 340,000
19 people a year in the United States?

20 **MR. SASSER:**

21 Objection.

22 **MR. JACKSON:**

23 Did you say "soap"?

24 **MR. GRAY:**

25 Yeah.

1 Q. Soap doesn't kill anybody unless they
2 slip on it in the shower correct, sir?

3 MR. DURHAM:

4 Object to the form.

5 Q. Probably even harder for toothpaste to
6 kill anybody?

7 MR. SASSER:

8 Objection.

9 A. I'm not aware of that happening.

10 MR. GRAY:

11 Q. On Page 3, there is a section, Influences
12 on Smoking Initiation and Continuation. And then on
13 Page 4 in that same section, the first sentence you
14 say, Dr. Williams will testify about data from polls
15 and surveys to confirm the significant role of
16 peers, siblings, curiosity and rebellion in smoking
17 initiation.

18 I'm going to ask you about rebellion. Is
19 rebellion a theme that can be used in advertising?

20 A. Some consumers of various products may be
21 more rebellious than others and have more of a
22 rebellious trait than others.

23 Q. And can advertising campaigns portray
24 images of rebellion? Is it possible?

25 A. An advertising campaign can portray

1 multiple images and multiple themes.

2 Q. One of which is rebellion?

3 A. That could be a possibility.

4 Q. Okay. Are you aware of any internal
5 tobacco company documents that discuss the use of
6 rebellion or independence as a theme in creating
7 marketing strategies directed towards youth?

8 **MR. SASSEN:**

9 objection.

10 A. As I sit here today, I am not familiar
11 with documents that you have described.

12 **MR. GRAY:**

13 Q. Okay. You reference two Gallup Polls.
14 As you sit here today, do you recall reading any
15 other polls that have had an impact on your opinions
16 in this case?

17 A. I also mentioned the *USA Today* Teen Poll,
18 which is the Gordon Black Poll.

19 Q. Other than polls or surveys in this
20 report, are there any -- and I understand as someone
21 in marketing reviewing information all the time, are
22 there any specific polls or surveys you intend to
23 use?

24 A. None come to mind at this point, sir.

25 Q. Okay. Fair enough. Would you recognize

1 the Gallup organization as being a respected
2 authority with respect to polling practices?

3 A. Yes, I would.

4 Q. Okay. You state there are obvious flaws
5 in the '97 USA Today Teen Poll. What are those
6 flaws?

7 A. That poll was conducted by the Black
8 organization. It consisted of a large number of
9 questions about advertising and certain products.
10 And the question that dealt primarily with smoking
11 initiation was near the end of that list of
12 questions.

13 In putting together surveys, there is
14 something that researchers should be aware of, and
15 that's the order of questions and how questions are
16 laid out and the sequence of questions and the
17 possibility of how a large number of questions on a
18 particular topic may influence a response to other
19 questions.

20 Q. Okay. So the flaw here may be that they
21 had whole bunch of questions about advertising
22 followed by a question about smoking initiation?

23 A. That is correct.

24 Q. Okay. You also note that in the CASA
25 survey, advertising is not listed as a cause of

1 smoking initiation, or for that matter, the '93
2 Gallup Poll. I think you say that on Page 4.
3 Actually, it's the last sentence of the full
4 paragraph on Page 4.

5 A. Yes, I see that.

6 Q. Okay. Isn't it true that consumers tend
7 to discount the effect of advertising on their
8 personal consumption decisions?

9 A. Advertising may influence different
10 people in different ways, but the effect of a
11 particular ad is not to cause someone to actually
12 start with a given product class.

13 Q. Do you have an opinion as to whether or
14 not consumers tend to discount the effect that
15 advertising has on them when they are asked
16 questions about the effect of advertising?

17 A. Some consumers will discount the effect
18 of advertising on them.

19 Q. And that's a recognized phenomena in the
20 field of marketing research, isn't it, sir?

21 A. I am aware of the fact that it occurs,
22 but I don't have a percentage. I couldn't tell you
23 how many people believe that, but that is -- that
24 does occur.

25 Q. Okay. At the bottom of Page 4,

1 Dr. Williams will testify that, as noted above, the
2 research evidence shows overwhelmingly that
3 cigarette advertising is not a factor in smoking
4 initiation. And there, the research you're talking
5 about is published research, correct, sir?

6 A. This is research that is published in the
7 credible social science literature.

8 Q. Okay. Have you reviewed the Surgeon
9 General reports?

10 A. I have reviewed the marketing sections of
11 the 1994 report and the 1998 report.

12 Q. Do you recall if they say anything as to
13 whether or not advertising is a factor in smoking
14 initiation?

15 A. At this particular point, I don't
16 recollect. If you can give me some information, I
17 can respond accordingly.

18 Q. Well, let's keep going. You haven't read
19 any internal tobacco company documents that discuss
20 whether or not advertising is a factor in smoking
21 initiation, have you, sir?

22 **MR. DURHAM:**

23 Object to the form.

24 A. I have read tobacco company documents,
25 selected documents, but I do not know if that was in

1 there. At this point, I cannot recollect.

2 **MR. GRAY:**

3 Q. And, again, is there any research
4 evidence that says cigarette marketing is not a
5 factor in smoking initiation as opposed to
6 advertising?

7 A. Sir, advertising is part of marketing.

8 Q. But if a research paper or a published
9 paper concludes that advertising is not a factor in
10 smoking initiation, it's still possible that
11 marketing is a factor?

12 A. The credible social science literature
13 in this area indicates that advertising which is
14 part of marketing is not a factor in smoking
15 initiation. Smoking initiation comes about due
16 to non-marketer-controlled variables.

17 Q. Again, does any of that research conclude
18 that cigarette marketing is not a factor?

19 A. Advertising is part of marketing, and the
20 research shows that that's not a factor that
21 influences smoking initiation.

22 Q. When you say that's not a factor, you
23 mean advertising?

24 A. Advertising is not a factor. And it also
25 indicates that smoking initiation comes about

1 because of other variables that are not controlled
2 by marketers.

3 Q. Okay. On Page 5 about the fifth line
4 down, fourth line down, Research findings, however,
5 show that bans on tobacco advertising do not
6 uniformly reduce consumption and smoking
7 prevalence.

8 Why do you have the word "uniformly" in
9 that sentence? Are there some findings that do show
10 that bans on tobacco advertising reduce consumption
11 and prevalence?

12 A. The research that I have reviewed about
13 advertising bans in other countries, the results
14 indicate that the bans themselves did not lower the
15 consumption of tobacco products.

16 Q. Okay. What about smoking prevalence?

17 A. Those same studies indicated that tobacco
18 bans did not reduce smoking prevalence.

19 Q. Okay. And here again, these are studies,
20 advertising studies, not marketing studies, correct?

21 A. These were studies published in the
22 social science research literature that dealt with
23 advertising bans.

24 Q. Okay. Are you aware of any published
25 literature which indicates that bans on advertising

1 are effective in reducing consumption or prevalence?

2 A. At this point, I cannot sit here and say
3 that I'm aware that the literature that I reviewed
4 showed that bans did not have an impact.

5 Q. Have you reviewed any literature from
6 countries where the bans have gone further than bans
7 on advertising and other forms of marketing have
8 been banned?

9 A. As I sit here, I do not remember that I
10 reviewed articles that dealt with advertising bans
11 only.

12 Q. Page 5 of your report, first paragraph,
13 refers to the alleged link between advertising
14 recall and cigarette usage. You use the word
15 "alleged." You would agree that there is some
16 published literature that indicates that there
17 is a link between recall and cigarette usage,
18 correct?

19 A. It is my opinion that you can recall an
20 ad and remember an ad, but that does not lead you or
21 cause you to smoke.

22 Q. Can it be an influence in a decision to
23 smoke?

24 A. The literature shows that smoking
25 initiation results from parents, peers, other

1 non-marketer-dominated factors.

2 Q. So you're saying that advertising recall
3 is not influential in the decision to begin smoking?

4 A. Advertising recall is not among the
5 variables that will cause someone to begin smoking.

6 Q. Is there a difference between something
7 being a cause and something being influential?

8 A. There can be a connection or a
9 correlation between something and not a cause.

10 Q. Okay. So just so I understand. So you
11 would say that there is simply a correlation between
12 advertising recall and cigarette smoking, not that
13 the awareness of the advertising has any actual
14 influence on the decision to smoke?

15 A. Sir, could you restate that question? I
16 got lost in the process.

17 Q. Okay. If something is influential, is it
18 causative in any manner?

19 **MR. DURHAM:**

20 Object to the form.

21 **MR. SASSER:**

22 Objection.

23 A. There can be a correlation or a
24 relationship. That does not imply causation.

25 **MR. GRAY:**

1 Q. Are you aware of research in the
2 published literature that indicates that recall of
3 ads is evidence that there is a causal link between
4 advertising and smoking? Is there any literature
5 out there that supports that position?

6 A. I have seen information describing that,
7 but just because you have two or three variables
8 that are connected, it does not imply causation.

9 Q. Okay. Further on Page 5 you say,
10 Research evidence shows -- and this is the end of
11 the full paragraph -- that children are skeptical of
12 advertising and advertising tactics at a
13 surprisingly early age. Actually, it says
14 advertisers' tactics. Is it your opinion that
15 children are more skeptical than adults of
16 advertising or advertisers' tactics?

17 A. It is my opinion that children become
18 more skeptical of advertising, whether it's
19 television or any other type of advertising, at an
20 age earlier than most adults give them credit of
21 becoming skeptical. That's my opinion.

22 Q. As a general matter, what age would you
23 say most children begin to become skeptical of
24 advertising and advertising tactics?

25 MR. SASSER:

1 Object to form.

2 A. Could you restate that, please?

3 **MR. GRAY:**

4 Q. Well, I guess that sentence is trying to
5 say that there is an age at which children become
6 skeptical of advertising. And so, I'm asking at
7 what age is that true, recognizing that all children
8 are different?

9 A. Children are different, and their
10 cognitive growth will proceed at different rates.
11 But research has shown that at ages earlier than
12 most people think, and if I remember correctly, the
13 age is in the range of six to eight, and I would
14 have to check that to be sure, children are more
15 aware, and more aware of the nature of advertising,
16 than adults give them credit for being. Their level
17 of skepticism is greater at that age than adults
18 give them credit for.

19 Q. At what age, if you know, are children's
20 cognitive abilities as the same level as adults with
21 respect to the ability to interpret advertising
22 messages?

23 A. That, I cannot answer.

24 Q. Later on Page 5 you say, Some of the
25 studies that proclaim a causal link between

1 cigarette advertising and cigarette smoking have
2 major methodological flaws, as well as strained
3 assumptions, and, in particular, cites the Pierce
4 1998 study. If you recall, can you tell me what
5 major flaws are involved with the Pierce '98 study?

6 A. Pierce did the longitudinal study, and in
7 that study he compared the use in Time Period 1 to
8 some Time Period 2. And I believe there was a three
9 or four year time span in between. And in looking
10 at the data, there are questions about the
11 definitions used. There are questions about the
12 methods used to compare Time Periods 1 and 2. There
13 are questions about the number of people that did
14 not respond in Time Period 2. And are those people
15 different from the ones that responded initially.

16 So these are some questions that would
17 cause people to ask questions about the results
18 themselves. And that same methodology is followed
19 by Biener and Siegel. So there should be the same
20 kinds of flaws because the same methodology was used
21 in both of those papers.

22 Q. What about strained assumptions? What
23 strained assumptions were involved in the Pierce
24 study?

25 A. If I remember correctly, one of the

1 strained assumptions was the influence -- or what
2 influenced someone to change smoking behavior from
3 Time Period 1 to Time Period 2. There were things
4 listed there that would cause someone to really ask
5 questions in terms of how the research was done. If
6 you could show me one of the papers, I could
7 probably point to something in particular.

8 Q. I actually think that answer is
9 responsive enough for now.

10 Back to the bottom of Page 5. You said
11 some of the studies that proclaim or cause a link
12 between advertising and smoking have major flaws,
13 and you cite Pierce and then you cite Biener and
14 Siegel. Are there some studies that proclaim such a
15 causal link that did not have major methodological
16 flaws, in your opinion?

17 A. There were no studies that I reviewed
18 that indicated a causal link between advertising and
19 smoking initiation.

20 Q. Except ones that had flaws; is that fair?

21 A. The two -- and these two studies had, if
22 I remember correctly, that causal element in their
23 titles.

24 Q. But they didn't establish it to you?

25 A. It was not established.

1 Q. Okay. Dr. Williams, on Page 6 you say
2 that the use of target marketing by cigarette
3 manufacturers is consistent -- and this is in the
4 first full paragraph -- is consistent with the
5 standard marketing practice of consumer product
6 companies worldwide.

7 Tell me about your study of the tobacco
8 companies use of target marketing.

9 MR. SASSER:

10 Objection.

11 MR. GRAY:

12 Q. What's the basis of your opinion that
13 it's consistent with marketing practices worldwide?

14 A. There are a lot of different brands of
15 cigarettes as you have a lot of different brands of
16 soap, a lot of different brands of toothpaste.
17 Those brands are aimed at particular sectors of a
18 marketplace. So just as you have brands of
19 cigarettes that have a particular focal point, you
20 will have brands of soap or brands of paint that are
21 aimed at particular groups based on different
22 circumstances.

23 Q. Is there anything else that supports your
24 opinion that cigarette manufacturers' target
25 marketing is consistent with standard marketing

1 practices worldwide?

2 A. My general marketing knowledge and
3 background and my understanding of the development
4 of marketing strategies and my knowledge of just
5 market segmentation in general, I know that there
6 are consistencies in terms of how the segmentation
7 process occurs.

8 Q. Now, you read Dr. Glover's report and
9 Dr. Marshall's report, correct?

10 A. I did review portions of that report.

11 Q. And you had access to all the documents
12 cited in that report, correct?

13 A. Yes, I did.

14 Q. Is there anything in that report or in
15 any of the documents cited in that report which
16 could lead somebody to conclude that cigarette
17 marketers' target marketing is not consistent with
18 standard marketing practices worldwide?

19 MR. SASSER:

20 Objection.

21 MR. GRAY:

22 Q. Did anything in that report trouble you,
23 sir, with respect to the tobacco companies' target
24 marketing strategies?

25 MR. SASSER:

1 Objection.

2 A. Could you rephrase that, sir.

3 **MR. GRAY:**

4 Q. Was there anything offensive to you in
5 the report or in documents cited therein with
6 respect to tobacco companies' target marketing
7 practices?

8 **MR. DURHAM:**

9 Objection.

10 **MR. SASSER:**

11 Objection.

12 A. Market segmentation is a generally
13 separate way of subdividing a larger market into
14 more homogenous subsets. Tobacco companies have a
15 lot of different brands of cigarettes, and those
16 brands are aimed toward particular sectors of the
17 marketplace. That is very consistent with the
18 marketing strategies, marketing segmentation
19 strategies, undertaken by other consumer and
20 non-consumer product companies.

21 **MR. GRAY:**

22 Q. Okay. Maybe I don't understand this
23 question -- I mean this statement.

24 When you say the use of target marketing
25 by cigarette manufacturers is consistent with

1 standard marketing practice of consumer product
2 companies worldwide, are you saying you analyzed how
3 the cigarette companies have engaged in target
4 marketing, or are you just saying that everybody in
5 the world target markets and, in general, there is
6 nothing wrong with it?

7 A. I'm basically saying that target
8 marketing is an accepted marketing practice
9 regardless of the industry.

10 Q. Okay. Later on Page 7, third line down.
11 Talking about marketers using themes and approaches
12 that consumers find appealing, you say, This is
13 particularly true in advertising where segment
14 members want to see ads with people like them. And
15 you use senior citizens as an example. Do people
16 also want to see ads -- scratch that. Could this be
17 true with respect to youth as well?

18 **MR. DURHAM:**

19 Object to the form.

20 **MR. SASSER:**

21 Objection.

22 A. Marketing people will develop marketing
23 strategies as well as advertising strategies that
24 will carry out the marketing goals and the
25 advertising goals that they have. The choices made

1 about the themes, the character portrayals and the
2 like, should be consistent with the advertising
3 goals, marketing goals, consistent with the
4 marketing strategy, advertising strategy. So the
5 choice of themes, the choice of people to appear in
6 ads and how those people look should be consistent
7 with the goals that they would like to accomplish.

8 **MR. GRAY:**

9 Q. And, for example, if tobacco companies
10 know that youth like to see ads with people who look
11 independent or rebellious or funny, then you might
12 expect tobacco companies to use those themes in
13 their ad, correct?

14 **MR. SASSER:**

15 Objection.

16 A. The choice of themes is going to be
17 consistent with the overall advertising strategy
18 regardless of the product category. It is going to
19 be the same across consumer product category. You
20 want to select themes to show your product or your
21 service in its very best light.

22 **MR. GRAY:**

23 Q. Show the product in the very best light
24 to that specific market group, correct?

25 A. Advertising strategies and marketing

1 strategies are generally aimed at particular sectors
2 of the marketplace, particular market segments.

3 Q. So the message is going to be adjusted
4 depending upon the market segment the ad is directed
5 to, correct?

6 A. Markets -- messages from marketers are
7 directed towards specific market segments.

8 Q. And so, the message may vary depending
9 upon which market segment the ad is directed to,
10 correct?

11 A. The message may vary.

12 Q. Okay. First full paragraph on Page 7.
13 Dr. Williams may testify regarding the opinions
14 expressed by other expert witnesses. I won't read
15 the whole sentence, but if you could read that
16 sentence for me.

17 A. You would like for me to read it?

18 Q. If you would. You don't have to read it
19 out loud. It's a long sentence.

20 A. I've read it.

21 Q. Okay. The opinion expressed by other
22 expert witnesses regarding unfair targeting of
23 advertising to adolescents, women, minorities and
24 blue collar workers. What other experts are you
25 aware of that have expressed opinions on those

1 topics in this case? Are there any specific reports
2 you have read?

3 A. As I sit here today, the one that comes
4 to mind, and there could be others, I believe is the
5 Glover/Marshall report.

6 Q. Do you disagree that the industry has
7 targeted adolescents, women, minorities and blue
8 collar workers?

9 **MR. SASSER:**

10 Objection.

11 A. Could you break that down into separate
12 questions, please?

13 **MR. GRAY:**

14 Q. Let's talk about adolescents first.
15 Dr. Glover and Dr. Marshall conclude that the
16 tobacco industry has targeted youth in its marketing
17 efforts. Is that a fair characterization?

18 A. That probably would be fair.

19 Q. Do you agree, disagree or have no opinion
20 as to the opinion of Drs. Marshall and Glover with
21 respect to marketing youth?

22 **MR. SASSER:**

23 Objection.

24 A. My opinion is, that I don't know the
25 intent of some of the marketing initiatives of the

1 tobacco companies, but I do know the effect of those
2 would be to not influence youth to begin smoking.
3 Smoking initiation would not result due to whatever
4 things are mentioned in that particular report by
5 Glover and Marshall.

6 **MR. GRAY:**

7 Q. Okay. But you don't have an opinion as
8 to whether or not the tobacco companies attempted to
9 target youth in their marketing campaigns, do you?

10 **MR. SASSER:**

11 Objection.

12 A. I don't have a response to that question,
13 sir.

14 **MR. GRAY:**

15 Q. Do you have an opinion as to whether the
16 tobacco companies targeted youth in their marketing
17 programs?

18 **MR. SASSER:**

19 Objection.

20 **MR. GRAY:**

21 Q. I'm not asking you about the effect of
22 the programs. Do you have an opinion as to whether
23 or not tobacco companies historically have targeted
24 youth at any time in their marketing programs?

25 **MR. SASSER:**

1 Objection. Can we get the definition of
2 youth? If not, just object to the question on
3 grounds of vague.

4 **MR. GRAY:**

5 Under 18.

6 A. I don't know all of the marketing
7 practices that have occurred in all of the tobacco
8 companies, but I am aware of the fact that whatever
9 those practices were and for whatever reasons those
10 practices were engaged -- and I don't know all the
11 details -- that the effect of those practices would
12 be to not encourage someone 18 or whatever to begin
13 smoking a cigarette.

14 **MR. GRAY:**

15 Q. But having had full access to
16 Dr. Glover's report and all of the documents cited
17 therein, you have no opinion about whether or not
18 the tobacco companies, in fact, targeted youth --

19 **MR. SASSER:**

20 Objection.

21 **MR. GRAY:**

22 Q. -- in their marketing programs? Do you
23 have an opinion?

24 A. Sir, I do not have an opinion.

25 Q. Okay. Again, I'm not talking about the

1 effect of this marketing, but do you have an
2 opinion -- let me back up.

3 Page 7 characterizes, I assume,
4 Dr. Glover and Dr. Marshall as saying that the
5 tobacco industry unfairly targets to certain groups.
6 Is there anything that you read in Dr. Glover's
7 report regarding targeting women, minorities or blue
8 collar workers that you find offensive, sir?

9 **MR. SASSER:**

10 Objection.

11 A. Could you show me a particular passage,
12 and maybe I could respond to a particular series of
13 questions?

14 **MR. GRAY:**

15 Q. Well, it's your report. You say that
16 you're going to offer -- you may testify regarding
17 opinions that the industry unfairly targets
18 advertising to certain groups. Do you have an
19 opinion as to whether or not the industry has
20 unfairly targeted certain groups?

21 **MR. SASSER:**

22 Objection.

23 A. My opinion is that the tobacco companies
24 have engaged in market segmentation just as other
25 consumer product companies have engaged in that same

1 practice.

2 **MR. GRAY:**

3 Q. And as far as you know, the tobacco
4 companies market segmentation tactics have been
5 similar to other market segmentation tactics used
6 worldwide?

7 **MR. DURHAM:**

8 Object to the form.

9 A. It is my opinion that tobacco companies
10 have used market segmentation principles just as
11 other firms and other industries and other product
12 categories have used those concepts to subdivide
13 their markets.

14 **MR. GRAY:**

15 Q. And, in your opinion, there is nothing
16 wrong with the way that tobacco has gone about
17 targeting these market segments?

18 A. It is my opinion that they have engaged
19 in market segmentation. There is nothing wrong with
20 the practice of market segmentation. There is
21 nothing wrong with target marketing. There is
22 nothing wrong with subdividing a larger market into
23 smaller groups.

24 As indicated on Page 6, there are
25 several, more than several, advantages to market

1 segmentation. And market segmentation is a very
2 useful marketing tool. So tobacco companies have
3 engaged in this practice of market segmentation just
4 as others have.

5 Q. Just as others have?

6 A. They have practiced the principles and
7 the concepts of market segmentation just as other
8 firms and other industries practice those concepts.

9 Q. But in your review of Dr. Glover's
10 report, and recognizing that all the documents cited
11 in the report were available to you, do you find
12 anything offensive in the manner in which the
13 tobacco company has engaged in target marketing to
14 women, blue collar workers or youth?

15 **MR. SASSER:**

16 Objection.

17 A. Tobacco companies have used some of the
18 same basic means of segmenting markets. This
19 morning we talked about demographics as a way of
20 segmenting markets. We also talked about
21 psychographics as a way of segmenting markets. So
22 those are two very commonly used ways in a number of
23 industries to segment markets for consumer products.

24 **MR. GRAY:**

25 Q. So there is nothing wrong with the manner

1 in which the tobacco industry has engaged in target
2 marketing for women, blue collar workers and youth
3 based on the information you have seen and had
4 access to; is that your opinion, sir?

5 **MR. DURHAM:**

6 Objection.

7 **MR. SASSER:**

8 Objection.

9 A. Could you break that down into several
10 questions.

11 **MR. GRAY:**

12 Q. With respect to women and the discussion
13 of target marketing to women, have you seen any
14 information in Dr. Glover's report, the documents
15 cited therein or otherwise, that would indicate to
16 you that tobacco company target marketing of women
17 is unfair or offensive?

18 **MR. DURHAM:**

19 Object to the form.

20 **MR. SASSER:**

21 Object to the form.

22 A. I have seen ads, tobacco ads, that would
23 indicate that there is some interest in attracting
24 women to that particular brand. So that would lead
25 me to believe that women have been a market segment

1 of interest in some categories.

2 **MR. GRAY:**

3 Q. Haven't seen anything you would
4 characterize as unfair or offensive, though?

5 **MR. DURHAM:**

6 Object to the form.

7 **MR. SASSER:**

8 Object to the form.

9 A. I have just seen -- I have seen the
10 portrayal of women in certain tobacco brand ads, and
11 again, that would lead me to believe that that is a
12 group of interest for the tobacco -- for that
13 particular firm for that brand of tobacco product.
14 As I indicated earlier, brands are targeted and
15 focused, aimed toward a particular group, and those
16 groups have similar characteristics.

17 **MR. GRAY:**

18 Q. Have you seen anything you would describe
19 as unfair or offensive with respect to tobacco
20 company marketing to women --

21 **MR. DURHAM:**

22 Object to the form.

23 Q. -- in the information you reviewed or had
24 available to you?

25 **MR. SASSER:**

1 Objection.

2 **MR. DURHAM:**

3 Objection.

4 A. I have seen in what I have reviewed that
5 women are a market segment and that is certainly no
6 different than other groups. Other consumer
7 products have used gender as a way, as a means, of
8 segmenting a consumer market.

9 Could you ask the question a different
10 way, sir, to make sure I'm getting the point?

11 **MR. GRAY:**

12 Q. Okay. Looking at the first full
13 paragraph on Page 7. Dr. Williams may testify
14 regarding the opinions expressed by other expert
15 witnesses, including but not limited to, expert
16 opinions that the tobacco industry unfairly targets
17 its advertising to certain groups, such as -- and
18 then it lists the groups.

19 Assume for a second that Dr. Glover and
20 Marshall's report opines that the industry unfairly
21 targets advertising to women. Do you agree or
22 disagree with that opinion?

23 A. Target marketing is a legitimate
24 marketing practice. If tobacco companies are
25 targeting women, then the targeting of adult women

1 is an acceptable marketing practice.

2 Q. And there is nothing in Dr. Glover's
3 report, the document cited therein or any ads you've
4 seen that you would describe as unfair or offensive
5 in connection with tobacco marketing to women?

6 A. As I sit here right now, I cannot respond
7 to that question.

8 Q. You can't recall anything specifically?

9 A. I can't recall anything.

10 Q. Same thing for minorities. Is there
11 anything you reviewed in Dr. Glover's report, the
12 documents cited therein or any other ads you've seen
13 that would cause you to believe that there is
14 anything about Tobacco's marketing to minorities
15 that is offensive or unfair?

16 **MR. SASSER:**

17 Object to form.

18 A. I have seen minorities in ads for tobacco
19 brands. Ethnicity is one way of segmenting a given
20 market.

21 **MR. GRAY:**

22 Q. Have you seen anything in Dr. Glover's
23 report, the documents cited therein or anywhere else
24 that could lead someone to believe that tobacco
25 marketing to minorities is unfair or offensive, any

1 aspect of it?

2 **MR. SASSER:**

3 Objection.

4 A. As I sit here today, I cannot recall.

5 **MR. GRAY:**

6 Q. Same question for blue collar workers.

7 Have you reviewed anything in Dr. Glover's report,

8 the documents cited therein that you had access to

9 or anywhere else that would lead you to believe that

10 there is anything unfair or offensive about tobacco

11 company marketing to blue collar workers?

12 **MR. SASSER:**

13 Object to form.

14 A. As I sit here today, I do not recall.

15 **MR. GRAY:**

16 Q. Have you reviewed the Cigarette

17 Advertising Code?

18 A. I have seen that. If you would show me a

19 copy of it, I could respond to a particular

20 question.

21 Q. Let me ask you this question first, and

22 then we can decide if we need to see it.

23 As you sit here today, do you have any

24 opinions as to whether or not the tobacco companies

25 violated the Cigarette Advertising Code in any

1 manner? If you want to see it, I will get it for
2 you.

3 **MR. SASSER:**

4 Let's let him take a look at it.

5 **MR. GRAY:**

6 Off the record.

7 (Off the record.)

8 **MR. GRAY:**

9 Q. Dr. Williams, over the break, I gave you
10 a copy of the Cigarette Advertising Code. Did you
11 get a chance to take a quick look at that?

12 A. I looked at the first page only.

13 Q. And you may not need to review any more.
14 My question is: Do you intend to give any opinions
15 in this case, or have you been asked to give any
16 opinions in this case, about whether or not the
17 tobacco companies' marketing efforts did or did not
18 comply with the Cigarette Advertising Code?

19 A. I have reviewed the advertising code, and
20 if a question is asked, I will respond.

21 Q. Is there anything in your report that
22 discusses the Cigarette Advertising Code, as best as
23 you can recall?

24 A. As best I can recall, there is nothing in
25 particular that addresses that specifically.

1 Q. And there is nothing about the Cigarette
2 Advertising Code listed in any of your reliance
3 materials, correct?

4 A. Not that I can recollect at this point.

5 Q. So you have no opinion at this time as to
6 whether or not the tobacco companies did or did not
7 violate the Cigarette Advertising Code at any point
8 in time, correct?

9 MR. SASSER:

10 Objection. I don't believe that's what
11 he testified to.

12 A. In order for me to respond, it would be
13 helpful if you would give me something in particular
14 to respond to, and I can compare that to the code if
15 I'm asked to do that.

16 MR. GRAY:

17 Q. Have you done that in preparation for
18 this deposition?

19 A. I have reviewed the code, and I am
20 vaguely familiar with what it says. And if I'm
21 asked to indicate whether a particular ad conforms
22 to that, then I can respond to a particular
23 situation as opposed to a generic situation of
24 whether the tobacco companies, in general, conformed
25 to the code.

1 Q. Do you have any knowledge of any
2 violation by any tobacco company of any provision of
3 the Cigarette Advertising Code?

4 A. As I sit here today, I cannot think of
5 anything that I can -- that comes to mind. Nothing
6 comes to mind as I sit here at this point.

7 Q. We have talked a lot about the report
8 submitted by Dr. Glover and Dr. Marshall. Are they
9 colleagues of yours, sir?

10 A. I do know them.

11 Q. Okay. Do you have respect for both
12 Dr. Marshall and Dr. Glover?

13 **MR. SASSER:**

14 Objection.

15 A. I know Dr. Marshall much better than I
16 know Dr. Glover.

17 **MR. GRAY:**

18 Q. Do you see any flaws in their methodology
19 in their report?

20 **MR. SASSER:**

21 Object on the basis the reports are so
22 long. The report is very long.

23 **MR. GRAY:**

24 Q. On Page 7 you say, Dr. Williams may
25 express opinions regarding the evidence upon which

1 other experts rely to the extent it relates to his
2 area of expertise. Do you have any opinions
3 regarding any evidence upon which Dr. Glover or
4 Dr. Marshall rely?

5 **MR. SASSER:**

6 Let me just object, again, Tim, because,
7 again, there are lots of opinions, lots of reliance
8 materials in that report. And he is going to be
9 asked to respond, perhaps, to the opinions they give
10 in their depositions. I think it's difficult for
11 him to answer a general question about an entire
12 multi -- multi-page report in terms of whether he
13 agrees or disagrees with anything in it. It's just
14 too broad.

15 **MR. GRAY**

16 Q. I'm really limiting it to opinions
17 regarding the evidence upon which the experts
18 relied. It sounds like that was written with
19 something specific in mind as to Dr. Glover's
20 report. Is that accurate or is that just a general
21 statement?

22 Let me state it differently.
23 Specifically as you sit here today, is there
24 something about the evidence upon which Dr. Glover
25 and Dr. Marshall rely that you have an opinion on?

1 **MR. SASSER:**

2 Well, again, I object. He is going to
3 need to look at, I would think, at the reliance
4 materials, you know, without answering that in a
5 general sense.

6 **MR. GRAY:**

7 Q. Dr. Williams, you stated earlier that the
8 documents cited in the report were available to you,
9 correct?

10 A. That is correct.

11 Q. Obviously, you will have an opportunity
12 at trial to comment upon what they testified about.
13 But as you sit here today, is there anything in
14 Dr. Glover and Marshall's report, anything about the
15 evidence upon which they rely, that you have a fixed
16 opinion on as you sit here today?

17 **MR. SASSER:**

18 Tim, I have got to object because there
19 is 255 footnotes in that report. If you want him to
20 look at it, I'm sure he will find studies and cites
21 that he has opinions on.

22 **MR. GRAY:**

23 We can do it that way.

24 **MR. SASSER:**

25 Well, I mean, I don't want to do it that

1 way, but I think the way you're questioning him is
2 just unfair. You're trying to box him into 255
3 footnotes without any specifics.

4 **MR. GRAY:**

5 Let's go off the record for a second.

6 (Off the record.)

7 **MR. GRAY:**

8 Q. Dr. Williams, on Page 7 at the end of the
9 first full paragraph you state, Dr. Williams may
10 express opinions regarding the evidence upon which
11 other experts rely to the extent it relates to his
12 area of expertise.

13 With respect to the report of
14 Dr. Marshall and Dr. Glover, as you sit here today,
15 do you have any opinions regarding the evidence upon
16 which they rely in their report?

17 **MR. DURHAM:**

18 Let me state an objection that we
19 discussed with Mr. Gray off the record.

20 I think we have reached an agreement that
21 we'll object to the extent that that question is
22 intended to elicit anything other than Dr. Williams'
23 current opinion with respect to any fixed views he
24 has as to the evidence on which Drs. Glover and
25 Marshall rely as he sits here today.

1 However, it could very well be that if he
2 had an opportunity to review materials cited in the
3 255 footnotes to the expert report, he may come up
4 with other additional concerns. And, in fact, when
5 he testifies at trial, he may have even more views
6 as to the materials on which they rely.

7 However, with those limitations, we will
8 let Dr. Williams respond to the question.

9 MR. GRAY:

10 I don't think this changes it, but
11 Dr. Williams did say earlier he has previously had
12 opportunities to review the 255 footnotes, but,
13 obviously, it's a lot of material.

14 Q. And it's not my intent to box you in. I
15 just want to know as you sit here today what are
16 your opinions, subject to your rights to go back and
17 look at the materials just as Mr. Durham just said.

18 A. As I sit here today, my opinions are
19 different from those expressed by Drs. Glover and
20 Marshall. And I base my opinions and my conclusions
21 on the credible social science research literature
22 and a review of that, and my opinions do differ from
23 their opinions.

24 Q. As to the evidence upon which they rely,
25 you know, earlier we talked about the Pierce article

1 and the Siegel article having flaws. As you sit
2 here today, is there anything cited in this report
3 as evidence upon which Dr. Glover and Marshall rely
4 that you have an opinion on?

5 **MR. DURHAM:**

6 Same objection.

7 **MR. SASSER:**

8 Ditto.

9 A. As I sit here, I cannot recall a
10 particular thing. But if given something in
11 particular, I will respond to that particular item.

12 **MR. GRAY:**

13 Okay. I think that's all I have, subject
14 to I never marked the Cigarette Advertising Code or
15 the Frank Statement. I'll do that and put that in
16 the next order whatever they should be as Exhibits
17 10 and 11.

18 **MR. SASSER:**

19 That's fine. Can we take five or ten
20 minutes with this group and see if we have any
21 questions?

22 (A short break was taken.)

23 **MR. SASSER:**

24 We have no questions.

25 (Deposition concluded at 3:22 p.m.)

(Exhibits 10 and 11 were provided and
marked on Wednesday, April 3, 2001.)

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Produced by RJC

in

HUMPHREY

CERTIFICATE OF COURT REPORTER

1
2 I, Janna White, CSR #1312, do hereby certify
3 that the foregoing pages contain a true and correct
4 transcript of the testimony of the witness as taken
5 by me at the time and place heretofore stated and
6 later reduced to typewritten form by computer-aided
7 transcription under the authority vested in me by
8 the State of Mississippi to testify to the truth and
9 nothing but the truth in this cause and was
10 thereupon carefully examined upon this oath.

11 I further certify that I am neither attorney
12 or counsel for nor related to or employed by any of
13 the parties to the action in which this deposition
14 is taken and further that I am not a relative or
15 employee of any attorney or counsel employed by the
16 parties hereto or financially interested in the
17 action.

18 Witness my signature, this the 13th day
19 of April 2001.

STATE-WIDE REPORTERS

22
23 Janna White
24 Janna White, CSR #1312
25

SIGNATURE OF WITNESS

I, _____ do solemnly swear that
I have read the foregoing _____ pages and that the
same is a true and correct transcript of the
testimony given by me at the time and place
hereinbefore set forth, with the following
corrections:

PAGE: _____ LINE: _____ CORRECTION: _____

Dr. Alvin Williams

NOTARIZATION

I, _____ notary public for
the State of Mississippi, _____ County,
do hereby certify that _____
personally appeared before me this the _____ day
of _____ 2001, at _____ Mississippi.

Notary Public

My Commission Expires:

H

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in

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSISSIPPI

EZELL THOMAS, et al.

PLAINTIFFS

AND

OWENS CORNING

VS.

CIVIL ACTION NO.: 96-0065

R. J. REYNOLDS TOBACCO COMPANY, et al.

DEFENDANTS

**NOTICE OF DEPOSITION OF DR. ALVIN WILLIAMS
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

PLEASE TAKE NOTICE that Owens Corning will take the deposition of Dr. Alvin Williams on April 3, 2001, at 9:00 a.m. at the offices of Baker, Donelson, Bearman & Caldwell, 4268 I-55 North Meadowbrook Office Park, in Jackson, Mississippi.

This deposition is being taken for all permissible purposes under the Mississippi Rules of Civil Procedure and Evidence, including but not limited to the preservation of testimony for trial. Dr. Williams is requested to produce to plaintiff, Owens Corning, all documents relied upon or reviewed in connection with his expert opinions, including any documents provided to him by any Tobacco Defendant or such defendant's agent or representative (including any attorney) ten days prior to the deposition.

The deposition will be conducted upon oral examination before an official court reporter or other individual duly authorized to administer oaths, and will be recorded stenographically. The deposition will continue from day to day until completed.

52434 4882

You are invited to attend and participate in the manner provided in the Mississippi Rules of Civil Procedure.

This the 1st day of March, 2001.

Respectfully submitted,

FORMAN, PERRY, WATKINS, KRUTZ
& TARDY, PLLC

By:

T. L.
RICHARD L. FORMAN, MS BAR #5427
WALTER G. WATKINS, JR., MS BAR #6988
TIM GRAY MS BAR #10192

OF COUNSEL:

FORMAN PERRY WATKINS KRUTZ & TARDY, PLLC
Post Office Box 22608
Jackson, MS 39225-2608
(601) 960-8600

CERTIFICATE OF SERVICE

I, Tim Gray, one of the attorneys for plaintiff, Owens Coming, do hereby certify that I have this day served a true and correct copy of the foregoing Notice of Deposition of Dr. Alvin Williams and Request for Production of Documents via facsimile upon all counsel listed on Exhibit "A" attached hereto.

THIS, the 1st day of March, 2001.

T. L.
Tim Gray

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HUMPHREY

in

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Expert Disclosure

Dr. Alvin J. Williams
Chair and Professor
Department of Management and Marketing
College of Business Administration
University of Southern Mississippi
Hattiesburg, Mississippi

Dr. Williams is Chair and Professor, Department of Marketing, University of Southern Mississippi. He is a tenured full professor of Marketing. He has taught (undergraduate and graduate courses), conducted research, and consulted in the areas of marketing, consumer behavior, and advertising for twenty-five years. He has authored and co-authored numerous articles in the marketing and management disciplines that have appeared in peer-reviewed journals. He received a B.S. degree in Marketing from the University of Southern Mississippi; a Master of Arts degree in Marketing from the University of Alabama; and a Ph.D. in Marketing from the University of Arkansas. A copy of his curriculum vitae is attached as EXHIBIT 1.

Consumer Behavior and Consumer Decision Making Processes

Dr. Williams will testify about consumer behavior in general, along with the cultural, social, individual, and psychological factors that affect the consumer decision making process. He will apply these models of consumer behavior to cigarette consumption. He will testify that consumer behavior is complicated and driven by a multitude of interacting factors that are not marketer-controlled. Consumption behavior results from more than mere exposure to stimuli. Some of the influential variables impacting consumer behavior include cultural factors (culture, values, subculture, social class), social factors (reference groups, opinion leaders, family), individual factors (gender, age and family life cycle stage, personality, self-concept, and

lifestyle), and psychological factors (perception, motivation, learning, and beliefs and attitudes).

These factors are identified in EXHIBIT 2. EXHIBIT 2 is a model of the factors influencing the consumer decision-making process (Lamb, Hair, McDaniel, 2000). Advertising is not among those factors.

Any potential influence of advertising is further negated by the ever-increasing volume of advertising clutter. Clutter diminishes even more the probability of a communication message getting through to consumers because of ever-increasing competition for people's attention (Webb and Ray, 1979; Britt, Adams, and Miller, 1972). For advertising to break through the clutter, it must first be relevant to the individual. Cigarette ads are primarily relevant to smokers.

For smokers of a particular cigarette brand, advertising for that brand should achieve an even higher degree of relevance.

Influence of Advertising on Consumer Behavior

Dr. Williams will offer the opinion that advertising and promotion perform different functions at different stages of the product life cycle. In the introductory or pioneering stage of the product life cycle, advertising and promotion are designed to create awareness of the functions of the product and to generate interest in the product class. The progression of the product through the growth stage and on into the maturity stage causes shifts in the roles of advertising and promotion. Marketers of mature products like cigarettes, toothpaste, and soap advertise to differentiate brands, reinforce brand loyalty, build brand equity, enhance brand image, and encourage switching behavior. The emphasis is on differentiating among brands. To convey distinctions among cigarette brands, variations in themes, color, imagery, or types of

endorsements are commonly used. There is no evidence that advertising causes consumers to use mature products in the first instance.

Dr. Williams will opine about the role of advertising in reinforcing brand loyalty. Brand loyalty is a key marketing goal for many products in the mature stage of the product life cycle, like cigarettes. Brands are a valuable investment and advertising and promotion are means of maintaining the value among relevant markets. Tobacco companies, as do other consumer products firms, use advertising and promotion to retain their current customer base. Given the costs of attracting new customers to a brand, firms focus much attention and effort on retaining the current customer brand base. As part of the process of maintaining loyalty and building brand equity, advertising themes and images are used to reinforce brand attributes, benefits, values, and personality. Tobacco advertising themes, just as those of other consumer products firms, are consistent with the overall thrust of the total marketing effort. The themes reinforce and undergird the key marketing message to be communicated to the designated target audience. The Marlboro Man is an example of an advertising theme supporting the total marketing effort. It is also noteworthy that advertising themes and images utilized in cigarette ads are similarly found in ads for computers, perfume, food, and the like.

Influences on Smoking Initiation and Continuation

Dr. Williams also will testify about the various influences on smoking initiation and continuation. Published literature, spanning decades and as recent as 1999, has consistently shown that the predictors of smoking onset are peer influence, parental and family influence, situational variables, curiosity, and rebellion. Dr. Williams will testify that the preponderance of

research evidence finds peer and family influences to be paramount in smoking onset and continuation. Examples of the research evidence are listed among the references in EXHIBIT 3.

Dr. Williams will testify about data from polls and surveys that confirm the significant role of peers, parents, siblings, curiosity, and rebellion in smoking initiation. In a 1991 Gallup Poll, using closed-ended questions, when asked about the "main reason you started smoking," 63% cited either peer pressure or the fact that some member of the family smoked. Similarly, in a 1993 Gallup Poll, using open-ended questions, the number-one reason identified for smoking initiation was "other friends smoked," followed by "family influence." Advertising was not listed at all as a cause of smoking onset. In a 1997 USA TODAY Teen Poll, in response to the closed-ended question "if you smoke now, what do you think most influenced you to begin?," over 94% said friends and parents were the dominant influences on smoking initiation, despite the fact that this question followed 67 questions about advertising. While the USA TODAY poll has some obvious flaws, it is useful in reinforcing the fact that family and peers are the paramount influences on smoking onset. 1999 surveys (National Surveys of Teens, Teachers, and Principals) conducted by the National Center on Addiction and Substance Abuse (CASA) at Columbia University corroborated findings of earlier polls and surveys. Findings showed responses to the question "why did you start smoking?" indicated the following: 37% identified friends, followed by 13% identifying curiosity and experimentation, while others started smoking 'to be cool.' Additional findings from the CASA survey showed 46% of 12-14 year olds initiated smoking because of friends, while 33% of the 15-17 started due to friends' influence. Advertising was not listed as a cause of smoking initiation at all.

Dr. Williams will testify that, as noted above, the research evidence shows overwhelmingly that cigarette advertising is not a factor in smoking initiation. There is no

empirical evidence to show that aggregate brand advertising leads to greater total tobacco consumption (Wilcox and Vacker, 1992; Wilcox, 1991; Boddewyn, 1994). Furthermore, if advertising caused people to smoke, one would expect that banning such advertising would result in a uniform reduction in tobacco consumption and smoking prevalence. Research findings, however, show that bans on tobacco advertising do not uniformly reduce consumption and smoking prevalence. A comprehensive study of European countries indicated no connection between advertising bans and cigarette consumption (Stewart, 1993). Even more convincing evidence on the weak link between advertising and cigarette consumption is presented in a recent study that reviewed 50 articles on the effects of aggregate advertising and of advertising bans on aggregate cigarette consumption (Lancaster and Gotthoffer, 2000). The authors conclude that full or partial bans on advertising are likely to have little or no effect on aggregate cigarette or tobacco demand because the banned advertising itself apparently has little or no effect on aggregate demand.

Dr. Williams will testify about advertising recall and its alleged link to cigarette usage. Contrary to the claims of those who oppose tobacco advertising, recalling brand names and advertising themes does not equate to using, or being inclined to use, a particular product or brand. Recall of ads does not prove a causal link to smoking or any other consumption behavior (McDonald, 1993). Furthermore, research evidence shows that children are skeptical of advertising and advertisers' tactics at a surprisingly early age. (Boush, Friestad, and Rose, 1994).

None of the research evidence proves that advertising causes one to smoke. Some of the studies that proclaim a causal link between cigarette advertising and adolescent smoking (Pierce, et. al., 1998; Biener and Siegel, 2000) have major methodological flaws, as well as strained

assumptions. These research flaws call into serious question the usefulness and correctness of the data and resulting conclusions.

Market Segmentation and Target Marketing of Consumer Products

Dr. Williams will testify that market segmentation and target marketing are accepted traditionally as credible means of developing and implementing marketing strategies for consumer products. The use of target marketing by cigarette manufacturers is consistent with the standard marketing practice of consumer products companies worldwide.

Segmentation provides the following advantages:

- (1) It enhances consumer satisfaction by focusing more sharply on what consumers really expect to receive in the marketplace;
- (2) It allows the firm to develop and implement a marketing plan tailored to the market;
- (3) It allows for the assessment of demand for a brand;
- (4) Knowing the market allows firms to identify competing brands in the marketplace and to develop responsive competitive positions;
- (5) It increases the likelihood of sales effectiveness and cost efficiencies in reaching the market; and
- (6) Defining a target market allows a firm to better identify opportunities (Bicker, 1997).

Dr. Williams will opine that market segmentation is based on a variety of factors, including, but not limited to, age, gender, and ethnicity. Segmentation is a marketing management tool that allows for greater effectiveness and efficiency in designing and executing marketing strategies. Consumers appreciate segmentation because brands and advertising campaigns are developed that more closely match their expectations, thus delivering higher

levels of consumer satisfaction. Market segments approve of being recognized as viable economic forces. Additionally, marketers communicate with segments using themes and approaches that consumers may find more appealing. This is particularly true in advertising where segment members want to see ads with people like them. Senior citizens want ads with class members that mirror them. Likewise, this is true for women and ethnic minorities. Thus, market segmentation benefits both consumers and marketers.

Dr. Williams may testify regarding the opinions expressed by other expert witnesses, including, but not limited to, expert opinions that the tobacco industry unfairly targets its advertising to certain groups, such as adolescents, women, minorities, and blue collar workers, causing these groups to begin smoking when they otherwise would not, smoke more than they otherwise would, and/or smoke different types of cigarettes than they otherwise would. He also may express opinions regarding the evidence upon which other experts rely to the extent it relates to his areas of expertise.

Dr. Williams bases his opinions on his education, his professional experience and expertise, and the pertinent literature and other information reasonably relied upon by members of his profession. He also bases his opinions on his review of advertisements, historical materials, public opinion polls, and the relevant sworn testimony in this case; on his continuing research; and on information and materials reasonably relied upon by experts in the fields of marketing, advertising, and consumer behavior.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, MISSISSIPPI

RYELL THOMAS, et al. (AS TO ALL DEFENDANTS)

PLAINTIFFS

AND

OWENS CORNING (AS TO TOBACCO DEFENDANTS ONLY)

VERSUS

NO. 995172

R.J. REYNOLDS TOBACCO COMPANY, et al.

TOBACCO DEFENDANTS

AND

AMEREN PRODUCTS, INC., et al.

ASBESTOS DEFENDANTS

CONFIDENTIALITY ACKNOWLEDGMENT B

I, Dr. Alvin J. Williams, being duly sworn on oath, state the following:

1. I have been retained by tobacco defendants [party] to serve as an expert in this action.

2. I have read and understand the Protective Order to which this Exhibit B is annexed and I attest to my understanding that access to information designated Highly Confidential may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Protective Order. I agree to be bound by the terms of the Protective Order. I hereby submit to the jurisdiction of this court, and to the application of Mississippi

law, for the purpose of enforcement of this Confidentiality Acknowledgment and the Protective Order.

3. I am not currently, and agree that, as a means of further protecting Highly Confidential information, shall not become an officer, director, employee, consultant or agent (other than outside Counsel) of any Competitor of the Designating Party (as defined in paragraph 10(e)(1)(b) of the Protective Order) for a period of two (2) years after I am last given access to any Highly Confidential information. I recognize that, as a practical matter, this limitation is unlikely to have an impact on my employment opportunities, but understand that if I do wish to take a position that would otherwise be barred by virtue of this provision, I shall consult with the Designating Party in an effort to reach an agreement about whether my intended activity with or for a Competitor can be structured in such a way, or the Designating Party can otherwise be reasonably satisfied, that there is not a material risk of unauthorized use or disclosure of Highly Confidential information.

4. I shall not use or disclose to others, except in accordance with the Protective Order, any Confidential information or Highly Confidential information. If I fail to abide by the terms of this Confidentiality Acknowledgment or the Protective Order, I understand that I may be subject to sanctions under the

contempt power of this Court, which includes the power to impose compensatory damages to remedy contemptuous conduct.

DATED, this the 23rd day of February, 2000.

Signature:

Alvin J. Williams
Printed Name

[DELETED]

Individual or Entity Represented

Subscribed and sworn to before me this 23rd day of February, 2000. Witness my hand and official seal.

[Signature]
Notary Public

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Factors That Affect the
Decision-Making
Process

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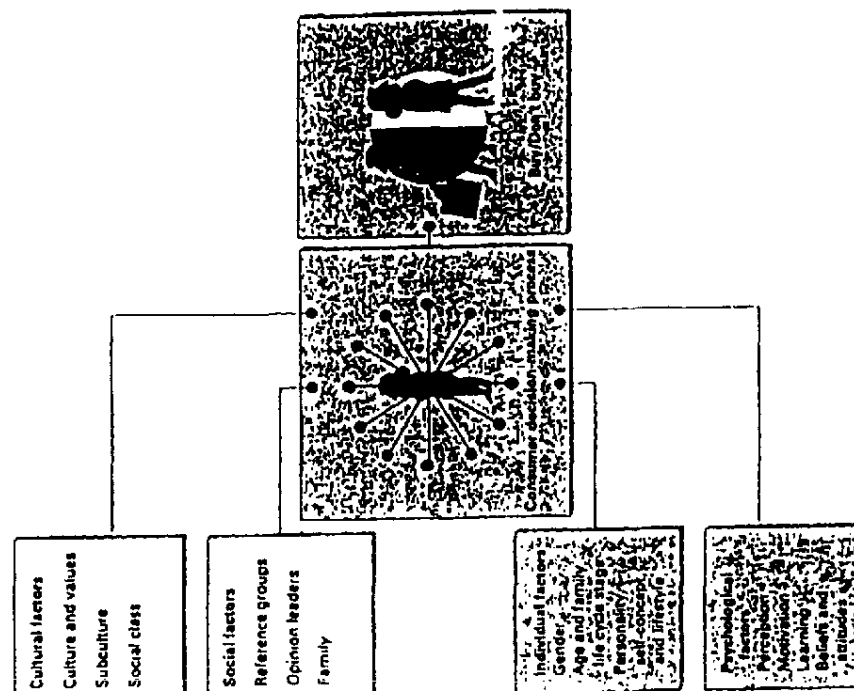


Exhibit II

EXHIBIT 3

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VITA

Dr. Alvin J. Williams
Chair and Professor
Department of Management and Marketing
College of Business Administration
The University of Southern Mississippi
Hattiesburg, MS 39406-5091
Office Number: 601-266-4634
Home Number: ◀[DELETED]▶

June 2000

DEGREES

Ph.D., 1980, University of Arkansas; In Business Administration, Major: Marketing; Minor: Management; Dissertation: AN EXPLORATORY STUDY OF SATISFACTION/DISSATISFACTION AND COMPLAINING BEHAVIOR AMONG ORGANIZATIONAL BUYERS.

M.A., 1975, University of Alabama; Major: Marketing

B.S., 1974, University of Southern Mississippi; Major: Marketing

ACADEMIC EXPERIENCE

1999-Present: Chair and Professor, Department of Management and Marketing, The University of Southern Mississippi

1994-1999: Chair and Professor, Department of Marketing and Finance, The University of Southern Mississippi

1988-1994: Chair and Professor, Department of Marketing, The University of Southern Mississippi

1982-1988: Associate Professor, Department of Marketing, University of Southern Mississippi

1980-1982: Assistant Professor, Department of Marketing, University of Southern Mississippi

1979-1980: Instructor, Management, University of Arkansas

1975-1977: Instructor, Marketing, Alabama A & M University, Huntsville, Alabama

PROFESSIONAL AND HONORARY ORGANIZATIONS

Alpha Mu Alpha (Honorary Marketing)
Golden Key National Honor Society,
Alpha Iota Delta (Decision Sciences)
Beta Gamma Sigma (Business Honorary)
Delta Sigma Pi (Business)
Omicron Delta Epsilon (Economics)

Dr. Alvin J. Williams, Page 3

Omicron Delta Kappa (Honorary Leadership)
National Association of Purchasing Management
National Education Association
Sigma Iota Epsilon (Management)
Society for Marketing Advances (formerly Southern Marketing Association)
American Marketing Association
Academy of Marketing Science
Southwestern Marketing Association

HONORS, AWARDS, AND CERTIFICATES

President-Elect, Society for Marketing Advances, 2000-2001

1999 BellSouth Outstanding Faculty Award, College of Business Administration

Professional Development Person of the Year Award, National Association of Purchasing Management, District VII (1993)

Hattiesburg, Mississippi JAYCEES Award, 1993

The University of Southern Mississippi Association of Office Personnel "Administrator of the Year" Award, 1992

T. A. Corcoran Award For Outstanding Service to National Association of Purchasing Management, District VII (1991)

Campbell-Saye Award For Outstanding Service to National Association of Purchasing Management-Mississippi (1989)

South Central Bell Outstanding Teaching Award, College of Business Administration, April 1984.

PUBLICATIONS

Refereed Journals:

"Is Industrial Advertising Still Sexist," INDUSTRIAL MARKETING MANAGEMENT, 27, 1998, pp. 247-255. (With Michael S. Latour and Tony L. Henthorne)

"The Gaming Industry: The Role of Competitive Analysis and Market Positioning," ECONOMIC DEVELOPMENT REVIEW, Fall 1995, vol. 13, no. 4, pp. 19-21. (With Tony Henthorne)

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"Marketing Processes and Consumer Need Fulfillment: Retrospective Views and Future Prospects," JOURNAL OF MARKETING THEORY AND PRACTICE, Fall 1994, pp. 1-7. (With A. Ben Oumlil)

"Positioning Against Foreign Supply Sources in an International Purchasing Environment," INDUSTRIAL MARKETING MANAGEMENT, 23, 1994, pp. 371-382. (With Hokey Min and Michael S. LaTour)

"The Cross-Functional Imperative: The Case of Marketing & Purchasing," INTERNATIONAL JOURNAL OF PURCHASING & MATERIALS MANAGEMENT, accepted for 1994 publication (With Larry Giunipero and Tony Henthorne)

"How Organizational Buyers Reduce Risk," INDUSTRIAL MARKETING MANAGEMENT, 22, 1993, pp. 41-48. (With Tony L. Henthorne and Michael S. LaTour)

"Initial Impressions in the Organizational Buyer-Seller Dyad: Sales Management Implications," JOURNAL OF PERSONAL SELLING & SALES MANAGEMENT, vol. XII, no. 3, Summer 1992, pp. 57-65. (With Tony Henthorne and Michael LaTour)

"Purchasing's Role in Value Analysis: Lessons From Creative Problem Solving," INTERNATIONAL JOURNAL OF PURCHASING AND MATERIALS MANAGEMENT, vol. 28, no. 2 (Spring 1992), pp. 37-42. (With William C. Smith and Steve Lacy)

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"A New Model of the Strategic Market Planning Process: An Eclectic Approach," JOURNAL OF MANAGEMENT IN PRACTICE, vol. 1, no. 1 (Spring, 1989), pp. 41-44. (With Salman Sami)

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"Corporate Culture in the Academic Marketing Department," JOURNAL OF MARKETING EDUCATION, vol. 10, no. 1 (Spring, 1988), pp. 39-43. (With Richard Vreeland)

"Causes of Purchasing Myopia," INDUSTRIAL MARKETING AND PURCHASING, vol. 2, no. 1 (1987), pp. 26-29.

"A Classification and Analysis of JOURNAL OF PURCHASING AND MATERIALS MANAGEMENT Articles," JOURNAL OF PURCHASING MATERIALS MANAGEMENT, vol. 23, no. 3 (Fall, 1987), pp. 24-28.

"Doctoral Research in Purchasing and Materials Management: An Assessment," JOURNAL OF PURCHASING AND MATERIALS MANAGEMENT, vol. 22, no. 1 (Spring, 1986), pp. 13-16.

"What Buyers Like From Salesmen," INDUSTRIAL MARKETING MANAGEMENT (The International Journal of Organizational Marketing), vol. 14 (Spring, 1985), pp. 75-78. (With John Seminerio)

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"Industrial Buyer Complaining Behavior," INDUSTRIAL MARKETING MANAGEMENT, 9, 1980, pp. 299-304. (With C. P. Rao)

Dr. Alvin J. Williams, Page 6

Books:

"Marketing Purchasing and Supply," Chapter 30, THE PURCHASING HANDBOOK: A GUIDE FOR THE PURCHASING AND SUPPLY PROFESSIONAL, Sixth Edition, pp. 755-777, Joseph L. Cavinato and Ralph G. Kauffman, Editors in Chief, 2000, McGraw Hill, New York, NY.

Proceedings:

"Purchasing Efficiency vs Effectiveness: Millennial Thoughts and Strategic Implications," 85TH ANNUAL INTERNATIONAL PURCHASING CONFERENCE, SUPPLY MANAGEMENT AND ALL THAT JAZZ, April 30-May 3, 2000, New Orleans, LA, pp 180-183.

"Crafting Supply Chain Strategy Through Market Sensing," 85TH ANNUAL INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, SUPPLY MANAGEMENT AND ALL THAT JAZZ, April 30-May 3, 2000, New Orleans, LA, pp. 51-55.

"The Information Systems/Purchasing Interface: A Cross-Cultural Analysis of Customer Focus," 84TH ANNUAL INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, National Association of Purchasing Management, May 1999, San Diego, CA, pp. 192-196. (With Ake Sall)

"Barriers to Customer-Friendly Behavior in Purchasing Organizations," 1998, 83RD ANNUAL INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, INTERNATIONAL PURCHASING ROUNDUP, May 3-6, 1998, Dallas, Texas, pp. 28-31. (With Kathy Dukes)

"Structured Problem Solving for Supply Management Effectiveness," 1998, 83RD ANNUAL INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, INTERNATIONAL PURCHASING ROUNDUP, May 3-6, 1998, Dallas, Texas, pp. 309-313.

"Analyzing Female Consumers' Adaptive Shopping Behavior Using Employment Status and Education Level Segmentation Variables," ACADEMY OF MARKETING SCIENCE, PROCEEDINGS OF THE EIGHTH BIENNIAL WORLD MARKETING CONGRESS, vol. VII, Kuala Lumpur, Malaysia, June 24-27, 1997, pp. 28-33.

"Learning, Entrepreneurship, and Creativity: A Winning Triad For Purchasing's Future," NATIONAL ASSOCIATION OF PURCHASING MANAGEMENT 82ND ANNUAL INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, PURCHASING PROFESSIONALS: THE STARS ON THE HORIZON, Washington, D.C., May 4-7, 1997, pp. 232-234.

"Training Supply Managers for Effective Internal and External Relationships," NATIONAL ASSOCIATION OF PURCHASING MANAGEMENT 81ST ANNUAL INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, STRATEGIC PURCHASING-CHANGES IN THE WIND, Chicago, Illinois, April 28-May 1, 1996, pp. 451-456.

"Entrepreneurship in Purchasing: Reinventing the Function," NATIONAL ASSOCIATION OF PURCHASING MANAGEMENT 81ST ANNUAL INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, STRATEGIC PURCHASING-CHANGES IN THE WIND, Chicago, Illinois, April 28-May 1, 1996, pp. 143-147.

"Student Perceptions of the Importance of Purchasing and the Desirability of a Career in the Field," NATIONAL ASSOCIATION OF PURCHASING MANAGEMENT 80TH ANNUAL INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, A CHANGING ENVIRONMENT, THE TWENTY-FIRST CENTURY, May 21-24, 1995, pp. 302-306.

"Interfunctional Coupling: Implications for the Selling Process," NATIONAL ASSOCIATION OF PURCHASING MANAGEMENT 79TH INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, AT THE CROSSROADS, May 1-4, 1994, pp. 166-168.

"Using Patient Representatives to Enhance the Patient/Provider Relationship," BUSINESS TRENDS FOR THE 21ST CENTURY, VOLUME 1, ACADEMY OF BUSINESS ADMINISTRATION, pp. 1007-1010. (With Tony L. Henthorne and Beth Hogan Henthorne)

"Initial Impressions in the Buyer-Seller Dyad: An Analysis of Black Shopper Perceptions," MINORITY MARKETING: RESEARCH PERSPECTIVES FOR THE 1990s, PROCEEDINGS OF THE MINORITY MARKETING CONFERENCE, THE ACADEMY OF MARKETING SCIENCE, October 1993, vol. VI, pp. 18-22.

"Creativity and Purchasing: An Oxymoronic Combination?" 78TH INTERNATIONAL PURCHASING CONFERENCE PROCEEDINGS, NATIONAL ASSOCIATION OF PURCHASING MANAGEMENT, May 1993, San Antonio, TX, pp. 50-52

"Developing A Marketing Plan For Your N.A.P.M. Affiliate: A 'Nuts and Bolts' Approach," A COLLECTION OF PRESENTATIONS FROM THE 77TH ANNUAL INTERNATIONAL PURCHASING CONFERENCE, 1992, pp. 89-92. (With William C. Smith and Tony L. Henthorne)

"Purchasing Audits: Implications For Improving Small Business Efficiency," PROCEEDINGS OF THE 1992 NATIONAL PURCHASING AND MATERIALS MANAGEMENT RESEARCH SYMPOSIUM, Fresno, California, March 12-14, 1992. (With A. Ben Oumlil)

"The Purchasing/Marketing Marriage: Managerial Implications," PROCEEDINGS OF THE 1992 NATIONAL CONFERENCE ACADEMY OF BUSINESS ADMINISTRATION, pp. 485-488. (With William C. Smith and Tony L. Henthorne)

"Initial Impressions In The Organizational Buyer-Seller Dyad," DEVELOPMENTS IN MARKETING SCIENCE, ACADEMY OF MARKETING SCIENCE, vol. 15, 1992, pp. 38-42. (With Tony L. Henthorne and Michael S. LaTour)

"Purchasing in the Soviet Union: Changing Perspectives," PRESENTATIONS OF 76TH ANNUAL INTERNATIONAL PURCHASING CONFERENCE AND EDUCATIONAL EXHIBIT, National Association of Purchasing Management, Inc., May 1991, San Francisco, CA, pp. 263-266. (With William A. Bales and Robert F. Smith)

"The Interaction Between Consumers' Sentiments and the Economic Environment: A Longitudinal Study," MARKETING TOWARD THE TWENTY-FIRST CENTURY, PROCEEDINGS OF THE ANNUAL MEETING OF THE SOUTHERN MARKETING ASSOCIATION, Atlanta, GA, November 1991, pp. 32-35. (With Ben Oumlil and Joseph L. Balloun)

"Industrial Sales Training Programs: A Buyer-Oriented Perspective," PROCEEDINGS ATLANTIC MARKETING ASSOCIATION, Boston, Massachusetts, October 3-6, 1990. (With William C. Smith and John L. McClendon)

"Marketing Orientation For The National Association Of Purchasing Management And Its Affiliates: A Survival Tool For The 21st Century," 75TH ANNUAL INTERNATIONAL PURCHASING CONFERENCE AND EDUCATIONAL EXHIBIT, New Orleans, Louisiana, April 29-May 2, 1990.

"Consumer Education Programs and the Disadvantaged Consumer: A Conceptual Model and Managerial Implications," PROCEEDINGS of the Southern Marketing Association, New Orleans, Louisiana, November 8-11, 1989. (With A. Ben Oumlil and Michael A. Jones)

"Industrial Customer Satisfaction: A Threat/ Opportunity Matrix Approach," ATLANTIC MARKETING ASSOCIATION, October 1985. (With Ben Oumlil, John Anderson, and Joseph Wilson)

"Perceptions, Expectations and Adaptations of Consumers During the Economic Recession of 1980-1982," MIDWEST MARKETING ASSOCIATION, March 1985. (With A. Ben Oumlil and C. P. Rao)

"Dimensions of Intra-Organization Dissatisfaction and Complaining Behavior Among Industrial Buyers: Managerial Implications," PROCEEDINGS of the 11th International Research Seminar in Marketing, Les Cigales/Carry Le Rouet, France, June 1984. (With A. Ben Oumlil)

"Organizational Psychographics: Implications for Industrial Marketers," PROCEEDINGS of the Academy of Marketing Science, 1983, pp. 198. (With Ben Oumlil)

"International Marketing Research: Its Application in Developing Nations," PROCEEDINGS of the World Marketing Congress, Halifax, Nova Scotia, Canada, November 3-5, 1983. (With A. Ben Oumlil, M. Karuppan, and C. P. Rao)

"A Marketing Management Perspective For Preventive Health Care: A Conceptual Model and Some Theoretical Postulates," PROCEEDINGS OF THE SOUTHWEST MARKETING ASSOCIATION, 1982. (With John Anderson)

"Consumer and Organizational Buying Behavior: A Pedagogical Synthesis," PROCEEDINGS OF THE SOUTHWEST MARKETING ASSOCIATION, 1982.

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Other Publications:

Book Review published. "Minding The Store" (by Stanley Marcus), *The Southern Quarterly*, Spring-Summer 1999, pp. 296-297.

"Break Down the Barriers," *PURCHASING TODAY*, vol. 9, no. 11, November 1998, p. 12.

"Gaining Professional Respect By Becoming A Learning-Based Organization," *PURCHASING MANAGEMENT BULLETIN*, no. 2675, February 10, 1997, pp. 5-6.

"The Innovative Purchaser," *PURCHASING TODAY*, vol. 7, no. 4, April 1996, pp. 32-33.

"Hiring Purchasers Who Have Business Degrees," *NAPM INSIGHTS*, December 1994, pp. 52.

"Creativity Value Analysis' Missing Link," *NAPM INSIGHTS*, December 1993, pp. 6-7

"Megatrends 2,000 (and Beyond)," *NAPM INSIGHTS*, October 1993, vol. 4, no. 10, pp. 29-31.

"The Purchasing Function," Chapter 1, *THE PURCHASING HANDBOOK*, 5th Edition, National Association of Purchasing Management, 1993, pp. 3-28.

"Entering the Sales Zone," *NAPM INSIGHTS*, October 1992, pp. 16-17

"Consider These Marketing Concepts: Case Comments," *SMALL BUSINESS FORUM*, Winter 1990, pp. 23-26. (With Steven K. Lacy)

"Eastern Electric Company," (a case study), published by the George Washington University School of Government and Business Administration and the National Association of Purchasing Management (December, 1987).

"Industrial Marketing Class Should Stress Practical Applications," *MARKETING NEWS* (July 18, 1986) p. 44.

A GOLDEN OPPORTUNITY IN PURCHASING MANAGEMENT, a publication of the National Association of Purchasing Management. Served as revision editor (1985).

Dr. Alvin J. Williams, Page 11

STUDY GUIDE FOR INTRODUCTION TO BUSINESS: A
CONTEMPORARY VIEW, 4th Edition, Allyn and Bacon, Inc.,
1983. (With John A. Reinecke, William F. Schoell)

"Franchising: Opportunities and Pitfalls," BUSINESS
INSIGHTS (Fall, 1984). (With Dolly Loyd)

"Purchasing Agents' Satisfaction With Vendor
Attributes: Administrative Insights" BUSINESS INSIGHTS
(Spring, 1983).

"The New Assistant Professor of Marketing," MARKETING
EDUCATOR, Spring-Summer, 1982

"Fast Complaint Response and Supplier-Buyer Relations,"
MARKETING NEWS, May 1, 1981.

PROFESSIONAL MEETINGS

Papers Presented:

"Career Skills Needed for Supply Management Success,"
83RD ANNUAL INTERNATIONAL PURCHASING CONFERENCE,
NATIONAL ASSOCIATION OF PURCHASING MANAGEMENT, May 3-6,
1998, Dallas, TX.

Discussions:

"Overseas Programs and Student Exchange Programs,"
TWENTIETH ANNUAL MID-SOUTH MARKETING EDUCATORS'
CONFERENCE, Long Beach, Mississippi, March 18-20, 1992.

Discussant at the Southern Marketing Association
Conference in Atlanta, November 1986.

"Teaching Purchasing and Distribution," Midsouth
Marketing Educators Conference, University of West
Florida, April 1986.

"Deregulation and the Teaching of Transportation," Mid
South Marketing Educators Conference, Memphis State
University, Memphis, Tennessee, March 1984.

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"Marketing in Developing Nations: Implications for United States Marketers," Southwest Marketing Association, San Antonio, Texas, March 1984.

Served as discussant at the American Marketing Association Educators Conference, Dearborn, Michigan, August 1983.

"Industrial Buyer-Seller Cooperation During Periods of Economic Fluctuations," Southwest Marketing Association, Houston, Texas, 1983.

"Teaching Industrial Marketing," Mid South Marketing Educators Conference, Nicholls State University, Thibodaux, Louisiana, April 1983.

Sessions Chaired

Program Chair, Academy of Marketing Science, Second Conference on Minority Marketing, 1993.

Program Chair, 1993 National Association of Purchasing Management Annual Academic Conference.

Chair, Marketing Education Track, 1993 Southwest Marketing Association

Chair, Education in Business Track, Academy of Business Administration

"The Industrial Marketing-Industrial Purchasing Interface: Implications for Academicians and Practitioners," Southern Marketing Association, Atlanta, Georgia, November 1983.

Served as Chair of the Industrial Marketing Track for the Academy of Marketing Science, Miami Beach, Florida, May 1983.

Attendance:

Southern Marketing Association
Southwest Marketing Association
Academy of Marketing Science
American Marketing Association Educators Conference
National Association of Purchasing Management
Mississippi Association of Purchasing Management
MidSouth Marketing Educators Conference

CONSULTANCIES

Market Analysis for Hattiesburg Central Business District

Sales Management Seminar for the 1985 Marketing Symposium of Mississippi Power Company, January 1985.

Sales Training Program for Mississippi Power Company, May 1985.

Research and Consulting Interests:

Organizational Buying Behavior
Industrial Marketing Management
Selling and Sales Management
Marketing for Non-Profit Organizations

OTHER PROFESSIONAL ACTIVITIES

Appointed to Gender Equity Task Force, Supreme Court of Mississippi, 1998-2001

Seminar for National Association of Purchasing Management on "Negotiating Strategies," Washington, DC, and Providence, RI, 1998.

Presentation to the Southern Gas Association, "Strategic Supply Management and Creativity," Austin, TX, 1998.

Training Consultant, Amoco Corporation, "Creative Supply Solutions," Chicago, IL, 1998.

Seminar for the Purchasing Management Association of Boston on "Creative Supply Management," 1998, Boston MA

Participated in the National Association of Purchasing Management North American Research Symposium, 1998, Atlanta, GA.

Training Consultant, Exxon Corporation, "Creative Procurement Solutions," Houston, TX, March 12, 1998.

Invited presenter at the Supply Management Symposium at Florida State University, February 6, 1998, "Role of Creativity in Supply Management."

Chair, Education in Business Track, 1994 Academy of Business Administration.

Vice President, Membership, Southern Marketing Association, 1993-94

Chair, Marketing Education Track, 1993 Southwest Marketing Association.

Program Chair, 1993 National Association of Purchasing Management Annual Academic Conference.

Program Chair and Proceedings Editor for the Second Minority Marketing Conference sponsored by the Academy of Marketing Science, October 1993, Long Beach, MS.

Member, NAPM Educational Advisory Committee.

Professional Development Chair, National Association of Purchasing Management-Mississippi, 1988-present

Member, Board of Trustees of the Center For Advanced Purchasing Studies, 1991-93

Conducted over 75 one and two day seminars for business organizations (including FORTUNE 500 firms). Topics include purchasing, sales management, and marketing strategy.

Chair and member, Academic Planning Committee-NAPM, 1984-1993

"Marketing Fundamentals," Mississippi Power Company, Gulfport, Mississippi, July 1987.

"Action-Based Marketing Strategies for the Food service Industry," Valley Food Service, Jackson, Mississippi, October 1987.

Chairman of the Consumer Behavior Track for the 1987 Atlantic Marketing Association Conference, New Orleans, October 1987.

Produced by Rj-T-C

Participant in District Workshop of the National Association of Purchasing Management, Orlando, Florida, July 1987.

Reviewer for the Marketing Education Track, 1988 Academy of Marketing Science, Montreal, Canada.

Program Chairman for the 1987 Midsouth Marketing Educators Conference, March 1987.

Coordinator and Faculty participant, "Purchasing Productivity and Performance: Strategic Dimensions," Seminar for Mississippi Association of Purchasing Management, Miss. R & D Center, November 8, 1986.

Participant in District Workshop of the National Association of Purchasing Management, Nashville, Tennessee.

Reviewed two manuscripts for Prentice - Hall, Inc.: Industrial Marketing Management and Marketing Management.

Reviewed a Purchasing manuscript for Merrill, Inc.

Coordinator and Faculty participant, Certified Purchasing Manager Exam Review, Mississippi Research and Development Center, October 26, 1985.

"Developing Effective Negotiating Skills," Seminar Leader, Mississippi Hospital Purchasers Association, March 1985.

Reviewer for the Public Policy Track of the 1985 Southern Marketing Association.

"Purchasing and the Law: The Changing Nature of the Purchase Order," Guest presenter, Mississippi Association of Purchasing Management, February 1985.

Coordinator and Faculty participant, Certified Purchasing Manager Exam Review, Mississippi Research and Development Center, May 1, 1982.

"Purchasing's Contribution to Organizational Productivity," Guest speaker, New Orleans Purchasing Management Association, March 3, 1982.

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Dr. Alvin J. Williams, Page 16

"Improved Problem Solving Through Effective Negotiation," Guest speaker, Mississippi Association of Purchasing Management, March 11, 1982.

"Development of Pricing and Negotiation Strategies," Guest speaker, New Orleans Contract Management Association, September 1982.

"Purchasing and the Law," Seminar, Jackson, Mississippi, August 1982.

"How to Avoid A Price Increase," Seminar, Jackson, Mississippi, May 1983.

"The Application of Marketing and Management Techniques to Non-Business Organizations: Implications for MAE-NEA," Guest Speaker, Mississippi Association of Educators - National Education Association, May 10, 1982.

"Marketing of Professional Services", Presentation - Southern Center for Research and Innovation, November 1982.

Editorial Review Boards:

Associate Editor - INTERNATIONAL JOURNAL OF PURCHASING & MATERIALS MANAGEMENT

Reviewer - JOURNAL OF MARKETING THEORY AND PRACTICE

COMMITTEES, COUNCILS, AND ORGANIZATIONAL LEADERSHIP POSITIONS

University Committees:

CBA Dean's Search Committee, 1998
Commission on the Future of The University of Southern Mississippi, 1998
Chair, President's Council on Diversity, 1998
Member, USM Council of Chairs
USM President's Search Committee, 1996
Board of Directors, USM Foundation
Athletic Marketing Committee

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Southern Association of Schools & Colleges, Steering
Committee, 1994-95
Chair, Committee on Cultural Diversity
Placement Center Advisory Board
Tenure Committee, Chair
United Way Division Chair, 1993
Faculty Advisor, Sigma Alpha Epsilon
Faculty Advisor, Alpha Phi Alpha
Enrollment Management Committee
University Grade Review Council
Athletic Eligibility Committee
Chair of the Search Committee for the College of
Business Administration, 1984-1985
Marketing Department Library Liaison
Faculty-Staff Relations Committee (USM Alumni
Association)
USM Executive Committee for the United Way
Co-Chair of the University United Way 1985
Member of the Fraternities and Sororities Committee

Other Committees:

Appointed to a three year term on the Academic Planning
Committee of the National Association of
Purchasing Management.
Hattiesburg Area Chamber of Commerce Membership
Development Committee
Coordinator of the British Studies Program, University
of Southern Mississippi

SUBJECTS TAUGHT

Principles of Marketing, Principles of Purchasing, Sales
Management, Seminar in Marketing (MBA), Marketing Planning
(MBA), Seminar in Consumer Behavior (MBA), Logistics,
Industrial Marketing, Consumer Behavior, Marketing
Management

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Mailing Address:
Post Office Box 831
Raleigh, NC 27602
Telephone: (919) 755-2100
Fax: (919) 755-2150
Web site: www.wcr.com

Gwenda L. Laws
Direct Dial: (919) 755-2185
Direct Fax: (919) 755-6079
E-mail: glaws@wcr.com

March 23, 2001

Via Facsimile and U.S. Mail

To: Gerry Bufkin, Esq.
Forman Perry Watkins Kuntz & Tardy, PLLC
1200 One Jackson Place
188 East Capitol Street
Jackson, Mississippi 39225-2608

Re: *Owens Corning v. R.J. Reynolds, et al.*

Dear Gerry:

List

Pursuant to the Case Management Order, please find enclosed Dr. Alvin J. Williams' Reliance

Sincerely,


Gwenda L. Laws

GLL:kmw
Enclosure

cc: All Defense Counsel (via facsimile)

Thomas Reliance List - Dr. Alvin J. Williams

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5

HUMANITY

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Report on Tobacco
M. Joycelyn Elders, M.D.
June 19, 2000

Smoking and disease overview

Although numerous reports appeared beforehand, scientific knowledge about the adverse health effects of cigarette smoking has been accumulating rapidly since the first Surgeon General's Report on Smoking and Health causally linking cigarette smoking with the development of lung cancer in 1964 (USDHHS, A Report of the Surgeon General, 1964). Since that report, numerous scientific studies have been published that document the contribution of cigarette smoking to morbidity and mortality for a variety of conditions (USDHHS, A Report of the Surgeon General, 1998; USDHHS, A Report of the Surgeon General, 1988; US Bureau of the Census, 1990-1994; USDHHS, NCHS, 1997).

Cigarette smoking alters both the structure and function of central and peripheral airways, alveoli, and capillaries and the immune system of the lung. It has been proposed that there is a multi-step transformation from normal pseudostratified ciliated epithelium to squamous metaplasia, carcinoma *in situ*, and eventually invasive bronchogenic carcinoma.

Pulmonary function abnormalities have been documented in smokers. The principal risk factor for chronic obstructive pulmonary disease (COPD) is cigarette smoking. Other pulmonary symptoms include cough, increased phlegm production, wheezing and dyspnea.

Smoke particles and gases in which the nicotine of a cigarette is transported contain thousands of chemicals, many of which are toxic or carcinogenic. Although nicotine itself is the principal reason people smoke, the other chemicals do the bulk of the damage to health. These other chemicals are often collectively referred to as "tar" and provide flavor and other taste sensations. The tar and gases produced by combustion such as carbon monoxide, cause cancer, heart disease and respiratory illnesses as well as other conditions.

Chief preventable cause of death in the US

There is a massive body of evidence, derived from many scientific disciplines, that tobacco is addictive and kills smokers. Up to half of those who continue to smoke cigarettes will die prematurely from diseases caused by smoking, half of these deaths occurring in middle age. (Doll, et al. 1994; Todd, et al., 1995).

Nicotine dependency through cigarette smoking causes more death and disease than all other addictions combined (USDHHS, A Report of the

Surgeon General, 1988, USDHHS, A Report of the Surgeon General, 1994,
p. 30). In 1988, smoking was responsible for more than one of every five
deaths in the US, which accounted for approximately 434,000 excess deaths
each year. Smoking remains the single most important preventable cause of
death in our society (USDHHS, A Report of the Surgeon General, 1989,
Glantz, p. 221; USDHHS, A Report of the Surgeon General, 1990).

The American Cancer Society's Cancer Prevention II (CPS II) a
prospective evaluation of almost 1.2 million men and women from 1982 –
1986, found that the overall mortality ratio (*i.e.* deaths from all causes in
current smokers compared to deaths in those who never smoked) was 2.22
for men smoking 1-20 cigarettes per day and 2.43 for men smoking greater
than or equal to 21 cigarettes per day. Similarly, the mortality ratio was 1.60
and 2.10 respectively for women smoking 1 to 19 and greater than or equal
to 20 cigarettes per day (Thun, 1995).

Smoking is responsible for an estimated 30 percent of all cancer
deaths, including 87 percent of lung cancer deaths (USDHHS, A Report of
the Surgeon General, 1989). Smoking causes about 30 percent
of all cardiovascular deaths, and about 80 percent of all deaths from chronic
obstructive pulmonary disease (Fiore, et al, Dis. Mon.).

The causal relationship between smoking and lung cancer was clearly established in case-control and cohort studies in the 1950's and 1960's. The incidence of lung cancer in the 1930's was 14.9/100,000 increasing to 75.6/100,000. In the United States, more than 170,000 new cases of lung cancer are detected each year, with lung cancer accounting for more than 150,000 deaths at an annual health care cost of more than \$50 billion (American Thoracic Society, 1996).

Dr. C. Everett Koop, former US Surgeon General speaking to the National Press Club on September 8, 1998 said: By the year 2027, 27 years from now:

- 500 million people worldwide will die of tobacco related disease.

That is:

- Two times the population of the US which is now 274 million;
- A Vietnam War every day for 27 years;
- The Titanic sinking every 43 minutes for 27 years;
- If we would build a wall like the Vietnam Memorial Wall in Washington, D.C., it would stretch 1000 miles;
- One death every 17 seconds;
- Ninety percent addicted as teenagers.

(Koop, 1998).

Most important public health issue in the US

Cigarette smoking is very costly to both individuals and society. It has been estimated that about half of all regular cigarette smokers will eventually die from their habit. In 1993, the estimated smoking attributable cost for medical care was \$50 billion. When lost work and productivity were added, the total cost to society was estimated to exceed \$97 billion, or \$373 per capita. If these costs were borne by smokers in the form of cigarette taxes, the price of each pack of cigarettes would have to rise to \$4.00 (ATS, 1996).

Current smokers have more acute and chronic illness as well as more restricted activity days, more bed disability days and more school and work absenteeism than former smokers or those who never smoked (ATS, 1996, p. 861).

Therefore, it is my opinion that cigarette smoking is the most important public health issue of our time in the United States.

Diseases linked to cigarette smoking

The first Surgeon General's Report in 1964 concluded that cigarette smoking causes lung and laryngeal cancer, and chronic bronchitis.

Subsequent reports have determined that smoking causes coronary heart disease, atherosclerosis, oral cancer, intrauterine growth, retardation and low

Report on Smoking 6

birth weight babies, chronic obstructive pulmonary disease, and other conditions that constitute a wide array of serious health consequences (USDHHS, A Report of the Surgeon General, 1989; USDHHS, A Report of the Surgeon General, 1990; USDHHS, A Report of the Surgeon General, 1986a; USDHHS, A Report of the Surgeon General, 1988, USPHS-NIH, 1986; USDHHS, A Report of the Surgeon General, 1994, p. 6). It has also been associated with cancer of the bladder, pancreas, kidney, and stomach.

Dose relationship between smoking and disease

Considerable evidence indicates that the health problems associated with smoking are a function of the duration (years) and the intensity (amount) of use. The younger one begins to smoke, the more likely one is to be a current smoker as an adult, as well as a heavier user (USDHHS, A Report of the Surgeon General, 1994, p.6).

Both epidemiologic and experimental evidence suggest that the risk for lung cancer varies more strongly with the duration of cigarette smoking than with the number of cigarettes smoked (Peto, et al., 1977; Doll and Peto, 1978; USDHHS, A Report of the Surgeon General, 1994, p. 29).

Smoking pattern among sexes

During the first half of the 20th century, most smokers were men. However, by 1955, it could be seen that more women were beginning to

smoke. By 1990, an estimated 28 percent of the adult population was smoking (30 percent of men, 26 percent of women) (Fiore, Dis. Mon.). By 1995, the rates of smoking in young white males and females were almost equal (USDHHS, A Report of the Surgeon General, 1998).

Paralleling these changes in smoking behaviors were the changes in mortality rates of smoking related diseases, especially for women. From 1965 to 1986, lung cancer death rates increased twofold to fourfold among older male smokers and fourfold to sevenfold among older female smokers (USDHHS, A Report of the Surgeon General, 1989). Lung cancer replaced breast cancer as the number one cause of cancer death among women (USDHHS, A Report of the Surgeon General, 1989). Overall, there was a large increase in smoking related deaths among American women between 1965 and 1985.

General smoking trends over time

The dramatic increase in cigarette smoking was due to the invention of the machine that allowed mass production of rolled cigarettes in 1881 and the introduction of the blended cigarettes (Camel). During the first 50 years, most smokers were men. In 1955, more than half of the adult male population smoked, whereas smoking by women was less common but on

the rise. By 1990, an estimated 28 percent of the adult population was smoking.

In addition to gender, a consistently high percentage of blacks than whites smoked through the past two decades, and by the mid 1980s approximately 6 percent more blacks than whites were still smoking (Fiore, et al., 1989). The rates for blacks, however, have recently been declining more rapidly.

The prevalence of cigarette smoking in the United States has been decreasing since 1964. In 1965, 52 percent of men and 32 percent of women over the age of 18 years were cigarette smokers. By 1991, these percentages had decreased to 28 percent for men and 24 percent for women. Per capita, cigarette consumption for adults over 18 years also declined 39 percent from 4,345 in 1963 to 2,640 in 1991. Among high school seniors, the prevalence of daily cigarette smoking was 29 percent in 1976. It decreased during the 70s and 80s, but remains at approximately 25 percent in the 90s and is now increasing. Despite the decline of the adult smoking population of the US from over 50 to 46 - 48 million, the prevalence of cigarette smoking continues to increase in many developing countries and in our youth (ATS, 1996; Koop, 1998).

Nicotine addition

Nicotine defined

Nicotine is a naturally occurring alkaloid present in varying concentrations in different strains of tobacco (USDHHS, A Report of the Surgeon General, 1994, p. 31). An alkaloid is an organic nitrogen-containing compound that has a bitter taste. Nicotine is both a lipid and water soluble molecule that can be rapidly absorbed in a mildly alkaline environment through the skin or lining of the mouth or nose. Other alkaloids are morphine, heroin, and cocaine. Nicotine is a psychoactive drug that produces transient alterations in mood that are sufficiently rewarding to maintain self-administration (Pierce, et al., 1989).

As noted by my Report of the Surgeon General in 1994: "Because of the massive area for absorption in the alveoli of the lungs, nicotine inhaled deeply is almost immediately extracted from the smoke into the pulmonary veins; this sudden spike or bolus of nicotine is delivered to the brain, via arterial circulation, in approximately 10 seconds (p. 31)." Thus, tobacco products deliver the optimal addiction potential of nicotine.

Addiction defined

Drug addiction is the term most widely used to label various medical and social disorders related to the compulsive ingestion of psychoactive chemicals. The primary criteria for drug dependence are that the behavior is highly controlled or compulsive, the chemical is one whose mood-altering or psychoactive effects are central elements of the drug's activity, and the drug itself has the demonstrated capability of reinforcing behavior (USDHHS, A Report of the Surgeon General, 1994, p. 30).

Many behaviors that become regular, habitual, and hard to give up involve the ingestion of a substance. What sets drug addictions apart from less harmful habits is that the ingested substance releases a psychoactive drug with the demonstrated potential to addict (USDHHS, A Report of the Surgeon General, 1994, p. 31).

Patterns of behavior indicating addiction

The criteria for drug dependence was addressed in the Surgeon General's Report in 1988 and addressed again in my report in 1994. They are listed:

Primary criteria

- Highly controlled or compulsive use
- Psychoactive effects
- Drug-reinforced behavior

Additional criteria

Addictive behavior often involves the following:

- Stereotypic patterns of use
- Use despite harmful effects
- Relapse following abstinence
- Recurrent drug cravings

Dependence-producing drugs often manifest the following:

- Tolerance
- Physical dependence
- Pleasant (euphoric) effects

(USDHHS, A Report of the Surgeon General, 1994, p. 30)

The inability to regulate behavior, despite contrary desires or significant deleterious consequences, is the hallmark of addiction and a cardinal component of smoking behavior.

Nicotine content of cigarettes

Amount of nicotine delivery from cigarettes

Most cigarettes sold in the United States contain about 8 - 9 milligrams of nicotine, of which the smoker typically ingests 1 to 2 milligrams per cigarette (USDHHS, A Report of the Surgeon General, 1988; Benowitz, et al., 1983; USDHHS, A Report of the Surgeon General, 1994, p.

31) In general, a smoker absorbs only about 10 percent of the nicotine found in a cigarette (Benowitz, 1994). This can be increased to a maximum of about 40 percent with intensive smoking techniques (Slade, 1995, p. 230).

Many smokers appear to obtain 12-14 mg. of nicotine per day from their cigarettes. Cigarettes that have a delivery of less than 0.7 mg of nicotine per

cigarette as measured on a smoking machine, do not achieve large volume sales (Slade, 1995, p. 232; {1181.07}).

A better measurement of the strength of tobacco products than nicotine

The proportion of nicotine that is extractable with chloroform is recognized to be a better gauge of strength of tobacco products than the total nicotine level. It is thought that extractable nicotine reaches the brain more quickly than unextractable nicotine {1205.01}. Extractable nicotine is, essentially, free nicotine, the form that is more easily absorbed across biologic membranes (Slade, 1995, p. 229; 4).

Nicotine addiction is the most lethal form of addiction and causes more deaths than addictions to other substances.

Nicotine dependency through cigarette smoking is not only the most common form of drug addiction but also the one that causes more death and disease than all other addictions combined (USDHHS, A Report of the Surgeon General, 1988; USDHHS, A Report of the Surgeon General, 1994, p. 30).

It is the addictiveness of nicotine that keeps people smoking long enough and heavily enough for tobacco smoke to cause serious illness and death (USDHHS, A Report of the Surgeon General, 1989).

How nicotine fits the definitions of addictive substances

It is the presence of nicotine that makes tobacco addictive and explains why people use tobacco products. Nicotine has well documented pharmacological action (Slade, 1995, p. 228; {1184.02, p. 7}).

Some of the several thousand chemicals present in cigarette smoke may conceivably modulate nicotine's addictive effects, but the fact that different forms of nicotine delivery can be substituted for one another (e.g., nicotine gum or transdermal patch in place of cigarettes) suggests that nicotine is critical in the addiction process (Henningfield, 1984, Benowitz 1988; USDHHS A Report of the Surgeon General, 1988; Russell, 1990; A Report of the Surgeon General, 1994, p. 31).

Nicotine administration produces feelings of pleasure and euphoria that elevate the same scales on the Addiction Research Center Inventory as the effects of heroin, cocaine, alcohol, and other abused drugs (Henningfield, 1985; USDHHS, A Report of the Surgeon General, 1994, p. 38).

Cigarettes are designed to deliver a nicotine dose. This seems to fit the definition of a drug in the Food, Drug, and Cosmetic Act (Slade, 1995, p. 231; Food, Drug, and Cosmetic Act 21). One of the definitions of "drugs" in the act is "articles (other than food) intended to affect the structure or any

function of the body of [humans] or other animals (Food, Drug, and Cosmetic Act 21, par. 321 {g}{1}).

In 1210.01, p. 2 the R&D group at Southampton tie together the terms,

1. Satisfaction
2. Nicotine dose
3. Nicotine-related subjective improvement.

Tied together, these are about affecting the structure and function of the body (Slade, 1995, p. 231).

Receptors in the brain respond to nicotine stimulation by stimulating the release of dopamines and other neurotransmitters. Over time, the receptors become conditioned to expect nicotine (tolerance) and when deprived, the smoker experiences nicotine withdrawal. This pharmacological impact and withdrawal, enhanced by psychological and social factors related to smoking, create dependency on tobacco products.

The American Psychiatric Association (APA) has identified two medical disorders that pertain to nicotine addiction: nicotine dependence and nicotine withdrawal (APA 1987, USDHHS, A Report of the Surgeon General, 1994, p. 30).

Nicotine dependence

Nicotine dependence is classified as a psychoactive substance-use disorder characterized by a cluster of cognitive, behavioral, and physiologic symptoms that indicate that the person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences (APA, 1987; USDHHS, A Report of the Surgeon General, 1994, p. 30).

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Nicotine withdrawal

Nicotine withdrawal is an organic mental disorder induced by the removal of psychoactive substance. It is a characteristic withdrawal syndrome due to the abrupt cessation of or reduction in the use of nicotine-containing substances (e.g., cigarettes, cigars and pipes, chewing tobacco, or nicotine gum) that has been at least moderate in duration and amount. The syndrome includes craving for nicotine; irritability, frustration, or anger; anxiety; difficulty concentrating; restlessness; decreased heart rate; and increased appetite or weight gain (APA, 1987, p. 150; USDHHS, A Report of the Surgeon General, 1994, p. 30).

Most daily smokers report that they feel dependent on smoking and have experienced withdrawal symptoms (USDHHS, A Report of the Surgeon General, 1998; Henningfield, 1990; USDHHS, A Report of the Surgeon General, 1994, p. 31). The magnitude of the withdrawal syndrome is related to the previous level of nicotine intake (USDHHS, A Report of the Surgeon General, 1994, p. 33).

The time course of withdrawal symptoms varies among individuals and for different responses. Most withdrawal symptoms peak within the first few days of nicotine abstinence and then begin to recover along a variable course; the most severe total withdrawal syndrome usually lasts about three

to four weeks (USDHHS, A Report of the Surgeon General, 1988;

USDHHS, A Report of the Surgeon General, 1994, p. 33). Powerful urges to smoke may recur for many years (Hughes and Hatsukami, 1986;

USDHHS, A Report of the Surgeon General, 1988; USDHHS, A Report of the Surgeon General, 1994, p. 33).

Nicotine tolerance

Tolerance refers to a diminishing response to a drug through repeated exposures (Jaffe, 1985; USDHHS, A Report of the Surgeon General, 1988).

Tolerance is often demonstrated when increased dose levels are required to obtain the effects formerly produced by lower doses.

Tolerance to nicotine appears to be acquired as people progress from initially smoking a few cigarettes to smoking greater numbers of cigarettes more often. The development of tolerance to the aversive effects of nicotine, such as nausea and dizziness, may also facilitate the development of dependency (USDHHS, A Report to Congress, 1987; Shiffman et al. 1990[35]; Shiffman, 1989; Shiffman, 1991; McNeill, Jarvis, West 1987).

Tolerance of nicotine increases over time; experienced smokers can self-administer doses of nicotine that would make nonsmokers ill (USDHHS, A Report of the Surgeon General, 1994, p. 32).

The tolerance the nervous system develops to nicotine exposure can be at least partially overcome by increasing the dose. This effect has been studied since 1905 by Langley (USDHHS, A Report of the Surgeon General, 1988; Benowitz and Jacob 1993, USDHHS, A Report of the Surgeon General, 1994, p. 32).

Tolerance and addiction are intimately connected; there is an important relationship between the development of tolerance and the potential a drug has to cause addiction (Slade, 1995, p. 227).

Number of nicotine hits per year in average smoker

Multiplying the powerful addictive properties of nicotine is the sheer frequency with which it is used. The overall average for adult smokers is 19 cigarettes a day (USDHHS, A Report of the Surgeon General, 1994, p. 68).

A pack contains 20 cigarettes. A smoker takes about 10 puffs a cigarette (a frequently cited number). A pack-per-day smoker will obtain approximately 73,000 nicotine hits each year. In less than 15 years, by the time an average smoker who began midway through the teenage years is around 30 years old, a pack-per-day smoker will have experienced over a million such nicotine hits, making it the most practiced addiction.

Importance of smoke inhalation in promoting addiction

In essence, a cigarette is a system for delivery of nicotine to the smoker in attractive, useful form (RJR, August 1973, Minnesota Trial Exhibit 13,155).

Smoke inhaled into the lungs transmits nicotine to the brain in 10 seconds.

Inhaling cigarette smoke is an extremely rapid and efficient means of delivering nicotine to the brain. In simple terms, a cigarette delivers a dose of the main active ingredient, nicotine, into the smokers' lungs in a mixture of smoke particles and gases. The nicotine is rapidly absorbed into the blood through the large surface of the lungs (and mouth and throat) and reaches the brain within ten seconds. Receptors in the brain respond to nicotine stimulation by producing chemicals (dopamines and other neurotransmitters) that give the user what is described as a "hit," "kick," or "impact" – the drug effect of nicotine. This rapid reinforcement of smoking behavior makes nicotine very powerful in controlling behavior (USDHHS, A Report of the Surgeon General, 1994; USDHHS, A Report of the Surgeon General, 1988).

The rapid absorption of nicotine from inhaled smoke in the lungs is the chief advantage cigarettes have over cigars, the smoke from which is usually not inhaled, in producing the desired pharmacological effects (Slade, 1995, p. 230; Ockene, et al, 1982). Although smokeless tobacco has much

higher levels of nicotine than cigarettes, the delivery of the drug is much more gradual; the effect peaks within approximately 20 minutes of use (USDHHS, A Report of the Surgeon General, 1994, p. 31; Benowitz, 1988).

Inhalation is essential for nicotine absorption from a cigarette into the blood stream (Slade, 1995, p. 226 - 7; USDHHS, A Report of the Surgeon General, 1988).

Measuring absorption, using C_{14} labeled nicotine, Battelle found that non-inhalers absorbed 22 - 42 percent of the nicotine drawn into their mouths while inhalers absorbed 70 - 90 percent of the ingested dose (USDHHS, A Report of the Surgeon General, 1988; Geissbuhler and Haselbach, The fate of nicotine in the body. BAT, May 13, 1963 - Minnesota Trial Exhibit 12,434.

In general, a smoker absorbs only about 10 percent of the nicotine found in a cigarette (Benowitz, 1994). This can be increased to a maximum of about 40 percent with intensive smoking techniques (Slade, 1995, p. 230). Even shallow inhalation can result in the retention of as much as 95 percent of the nicotine that was inhaled (Slade, 1995, p. 232; Conclusion c., {1181.07}).

Nicotine absorbed through the lungs is essential for providing "satisfaction" to the consumer, thus is necessary for the intended functioning

of a cigarette (Slade, 1995, Inhalation and Product Improvement, {1180.07, p. 10}

Factors affecting rate and amount of absorption of nicotine

From the Surgeon General's Report of 1964, p. 74, the rate and amount of absorption of nicotine by the smoker depend to a greater or lesser extent upon the following factors:

1. Length of time the smoke remains in contact with the mucous membranes;
2. pH of the body fluids with which the smokes comes in contact.
3. Degree and depth of inhalation;
4. Degree of habituation of the smoker;
5. Nicotine content of the tobacco smoked;
6. Moisture content of the tobacco smoked;
7. Form in which tobacco is smoked (cut [cigarettes] or uncut [cigars]);
8. Length of butt;
9. Use of holder or filter,
10. Alkalinity or acidity of the tobacco smoke inhaled.
11. Agglomeration of smoke particles (more important in cigarette smoking).

Effect on central nervous system and brain

Nicotine's effects on the brain are among the important reasons people smoke (Slade, 1995, p. 231; {1207 01}). Nicotine exerts psychoactive or mood-altering effects on the brain that motivates repeated compulsive use.

Nicotine alters the function of the brain. Nicotine administration modulates the various levels of catecholamines that are important in the regulation of mood and reactions to stressful stimuli (USDHHS, A Report of the Surgeon General, 1994, p. 38; Pomerleau and Pomerleau, 1984).

Nicotine raises dopamine activity in the mesolimbic system of the brain which controls pleasure and pain. It also stimulates the release of antidiuretic hormone from the posterior pituitary which aids in maintaining water balance and blood pressure.

Human subjects report, and laboratory rats demonstrate, that nicotine produces acute effects that are more like a stimulant than a sedative (Henningfield, et al., 1985; USDHHS, A Report of the Surgeon General, 1988). Nicotine causes cortical EEG activation (increase in alpha and beta waves) that is associated with increased vigilance and improved cognitive function as well as anxiety relief (USDHHS, The Report of the Surgeon General, 1988; Pickworth, 1989). Conversely, nicotine deprivation leads to EEG deactivation and concomitant decreases in vigilance and cognitive

function (USDHHS The Report of the Surgeon General, 1988; Pickworth, 1989).

Repeated exposure to nicotine leads to morphological changes in the brain that cause the development of new binding sites for nicotine receptors, that mediate the effects of nicotine (Bock and Marsh, 1990, USDHHS, The Report of the Surgeon General, 1988; USDHHS, Report to Congress, 1991a; Keenan, 1988, USDHHS, The Report of the Surgeon General, 1994, p. 32).

Animal research has shown that nicotine exposure results in an increased expression (defined as up-regulation) of nicotine receptors in various regions of the brain (Ksir et al. 1985; Morrow, Loy, Cresse, 1985; Nordberg, et al , 1985; Schwartz and Kellar, 1985; Ksir, Hakan, Kellar 1987; USDHHS, A Report of the Surgeon General, 1994, p. 32).

These changes in brain structure that have been induced by nicotine exposure might predispose persons to the abuse of other drugs.

One possibility is that common pathways of drug-produced reinforcement in the brain might be altered so that the reinforcement produced by subsequent drug exposure is intensified. Central nicotinic receptors are known to be critical mediators of the reinforcing effects of nicotine (USDHHS, A Report of the Surgeon General, 1988). In turn, activation of these receptors leads to activation of the dopaminergic reward

system, that is critical in mediating the reinforcing effects of a wide variety of abused drugs, including cocaine and heroin. Thus, it is a plausible, but unproven, hypothesis that nicotine exposure would lead to a heightened sensitivity to the reinforcing effects of other drugs of abuse. This hypothesis is supported by the finding that the development of tolerance to nicotine is accompanied by the development of tolerance (cross-tolerance) to alcohol (USDHHS, A Report of the Surgeon General, 1994, p. 38; Burch, et al. 1988; Collins, et al., 1988).

Controlling the amount of nicotine that the smoker is exposed to

Manufacturers conducted research to find ways of maintaining adequate levels of nicotine in low tar cigarettes. Information provided to the Food and Drug Administration indicated that a key objective of the cigarette industry for the past 20 to 30 years has been maintaining an acceptable and pharmacologically active nicotine level in low tar cigarettes (Federal Register Vol. 61, No. 168, August 28, 1996). Some methods they used to accomplish this are:

1. Alter pH using ammonia to make cigarettes more alkaline.
2. Use of pyridine
3. Controlling the combustion of tobacco
4. Chemical manipulations raise free nicotine delivery

5. Genetic engineering to breed or develop high nicotine plants.
6. Methods used for tobacco blending
7. Filter and ventilation to remove more tar, less nicotine

(Vol. 61, Federal Register, No. 168, August 28, 1996).

Importance of "freebase" nicotine vs nicotine salts

Nicotine may be delivered to the smoker in at least three forms:

1. salt form in the particulate phase,
2. free base form in the particulate phase, and
3. free base form in the vapor phase.

It has long been thought that nicotine presented as types 2 and 3 are significantly more active (Richl, [BAT] 1984).

Nicotine is in the smoke of cigarettes in two forms, as freebase (like ammonia with higher pH) and as a nicotine salt (like ammonium chloride with lower pH).

Freebase nicotine is absorbed more rapidly than nicotine salts.

Nicotine exists in the freebase form at an alkaline pH (high pH). In acidic (low pH) environments, nicotine exists as a salt. The more rapid the absorption, the greater the impact nicotine has on the brain (Slade, 1995, p. 227; Henningfield and Keenan, 1993).

Regulating nicotine absorption through pH modification

Increasing the pH of a medium in which nicotine is delivered increases the physiological effect of the nicotine by increasing the ratio of free base to acid salt form, the free base form being more readily transported across physiological membranes (Williams, [Liggett], 1971). As smoke pH increases above about 6.0, an increasing proportion of the total smoke nicotine occurs in free form, which is volatile, rapidly absorbed by the smoker, and believed to be instantly perceived as nicotine kick (RJR, 1973; Minnesota Trial Exhibit 12,679).

According to its competitor R.J. Reynolds, the great success of Philip Morris's Marlboro brand was due to its greater "free" nicotine resulting from higher pH or alkalinity induced by the addition of ammonia technology (Bates, Jarvis & Connolly, 1999, p. 8). Ammonia can speed the delivery of free or unbound nicotine to smokers by raising the pH or alkalinity of tobacco smoke. The addition of ammonia or an ammonia-like compound as an additive is one of the ways both free-based cocaine, or free-based nicotine can be provided (Henningfield, 1997; RJR, 1973; Bates, Jarvis & Connolly, 1999, p. 8). In 1973, RJR asserted that with an old-style filter, any desired additional kick could be easily obtained through pH regulation (Minnesota Trial Exhibits 12,679 and 13,155).

Use of various types of filters to affect nicotine delivery to the smoker

A filter additive called polyethyleneimine (PEI) that boosted the delivery of extractable nicotine by alkalinizing cigarette smoke was used in a series of human test panel experiments {1205.03}. Increased levels of extractable nicotine increased the impact of inhaling while producing a small increase in throat and nose irritation. Mouth impact and mouth irritation were unaffected (Slade, 1995, p. 229; {1165.01, p. 2}).

A suggested upper limit for PEI was set at 3 percent of the filter by weight because of concern about adverse effects on bioassay (toxicology) tests (Slade, 1995, p. 229; {1169.01, p. 8}).

Ventilation holes in cigarettes affect nicotine delivery

In practice, low tar cigarettes have been produced by the addition of filters and most importantly by the use of filter ventilation (Koslowski, et al., 1998). Holes in the filter allow air to be drawn in to dilute the smoke and this reduces the amount of tar and nicotine residues collected by the machine. In the lowest tar cigarettes, 80 percent of the smoke is air drawn in through ventilation holes. Ventilation also means that the smoke might taste weaker because the agents that give rise to flavor are diluted with air.

However, smokers do not smoke like machines. Faced with diluted smoke, smokers tend to compensate by smoking the lower-tar cigarette more intensively, in order to obtain a satisfactory dose of nicotine. Compensation

may take the form of deeper or more frequent puffs, or blocking of ventilation holes – often subconsciously. The result is that smokers of low-tar cigarettes do not consume less nicotine (Benowitz, et al . 1983; Bates and Jarvis, 1999; Bates, Jarvis & Connolly, 1999).

Tobacco blends chosen by manufacturer affect nicotine delivery

The tobacco companies concluded that pure nicotine could not be used as an additive in a tobacco product, but a high-nicotine tobacco extract was permissible. Also the development of reconstituted tobacco with high-nicotine tobaccos was proposed (1170.01, p. 5). Manufacturers experimented with tobacco plants to develop strains that would contain higher amounts of nicotine in the leaf

“The FDA also learned of Brown & Williamson’s successful attempt to double the nicotine content of one variety of tobacco, dubbed Y-1.

Company officials admitted that Y-1 was intended to be a ‘blending tool’ to enable the company to maintain nicotine levels while lowering tar levels in low-tar products, though they said it was never used for that purpose

(Kessler, 1996; (FDA meeting with Brown & Williamson executives Rockville (MD): Food and Drug Administration, 1994:18, 29, 85-6, 124).

Y-1 which the company did use commercially in 1993(FDA meeting with Brown & Williamson executives Rockville (MD): Food and Drug

Administration, 1994, 18, 29, 85-6, 124), demonstrates at least one company's ability to control independently the nicotine levels in cigarettes (Kessler, 1997, p. 521)."

produced by RJRT
in
HUMPHREY

Severity of nicotine addiction

Several studies have found nicotine to be as addictive as heroin, cocaine, or alcohol (Henningfield, et al., 1990; Henningfield, et al, 1991; Koslowski, et al., 1993; USDHHS, A Report of the Surgeon General, 1994, p. 31). Moreover, because the typical pattern of tobacco use entails daily and repeated doses of nicotine, addiction is more common among all users than is true of other drug use, which tends to occur on a far less frequent basis (USDHHS, A Report of the Surgeon General 1988; USDHHS, A Report of the Surgeon General, 1994, p. 31) For example:

- 10-15 percent of current alcohol drinkers are considered problem drinkers.
- 85-90 percent of cigarette smokers smoke at least five cigarettes every day (Henningfield, et al., 1991; Koslowski, et al., 1993; Henningfield, 1992b; USDHHS, A Report of the Surgeon General, 1994, p. 31).

Seventy-seven to 99 percent of smokers are addicted to nicotine (Report of the Surgeon General, 1988). Seventy-five percent of young regular smokers are addicted (Report of the Surgeon General, 1994).

Number of smokers

There are currently between 46 and 50 million smokers in the US. In 1991, about 28 percent of men and 24 percent of women were smokers.

Currently, more than 36 percent of high school seniors are smokers

(USDHHS, A Report of the Surgeon General, 1998).

Recognition of addiction by smokers

In a 1991 Gallup Poll, 70 percent of current smokers reported that they considered themselves to be "addicted" to cigarettes (Gallup

Organization 1991; USDHHS, A Report of the Surgeon General, 1994, p. 31).

These findings are consistent with data from NIDA's (NHSDA), which showed that 84 percent of 12-through 17-year-olds who smoked one pack or more of cigarettes per day felt that they "needed" or were "dependent" on cigarettes (Henningfield, et al., 1990; USDHHS, A Report of the Surgeon General, 1994, p. 31).

Proportion of smokers who become addicted

The percentage of people who progress from smoking a few cigarettes to smoking at a regular, addictive level has been estimated to range from 33 to 94 percent.

For example, Russell 1990 has reported that a survey of adults in Great Britain in the mid-1960s indicated that 94 percent of those who smoked more than three cigarettes became "long-term regular smokers" (USDHHS, A Report of the Surgeon General, 1994, p. 33). Recently collected data in the US and Great Britain suggest that between 33 and 50 percent of people who try smoking cigarettes escalate to regular patterns of use (Hirschman, 1984; McNeil, 1991; Henningfield, et al, 1991).

Percent who try to quit

Tobacco-delivered nicotine can be highly addictive. Each year, nearly 20 million people try to quit smoking in the United States (USDHHS, A Report of the Surgeon General, 1990). Even among addicted persons who have lost a lung because of cancer or have undergone major cardiovascular surgery, only about 50 percent maintain abstinence for more than a few weeks (USDHHS, A Report of the Surgeon General, 1994, p. 31; West, 1986).

Percent who successfully quit

Only about 3 percent of those who try to quit smoking have long-term success (Pierce, et al. 1989). Only about 2 percent of smokers (or about 7-10 percent of those who try quitting) stop smoking for one year (USDHHS, A Report of the Surgeon General, 1994, p. 31).

The tobacco companies assert, "We continue to believe that nicotine is not addictive because over 40 million Americans have quit smoking, 90 percent of them without any help at all.... Glantz retorts, "Forty million Americans have indeed quit smoking, many with no help at all. Those are true numbers. But cocaine and heroin addicts stop, many with no help at all. This is a *non sequitur*. No one is saying cocaine and heroin aren't addictive (Graham, 1995, p. 294)."

Summary

Nicotine is one of the many biological active compounds found in cigarettes and other tobacco products. It is a pharmacologically active substance that acts on specific receptors in the mesolimbic system of the brain to stimulate release of the neurotransmitters, serotonin, noradrenaline and dopamine. Nicotine has been classified as an addictive substance by the APA, AMA, Surgeon General's Report of 1988, and the WHO. Tobacco companies were aware that the major pharmacologically active property of cigarettes was nicotine and that that is was addictive.

Cigarettes are considered to be a vehicle for the delivery of a unit dose of nicotine. Most smokers are addicted as children, and they are unable to quit. Tobacco products are the only products intended for consumption by humans that when used as directed are known to kill.

*General background of the Tobacco Companies' knowledge
about addiction issues*

Smoking and disease: What the tobacco industry knew when

1950s

"Plaintiffs have produced evidence that the defendants have acted in concert for their mutual benefit and defense, at least since 1954, when each of the defendants with the exception of Liggett (the 'defendants' or the 'non-settling defendants'), published a document under the name Tobacco Industry Research Committee, now the defendant The Counsel for Tobacco Research USA, inc. (CTR). This document, entitled 'A Frank Statement to Cigarette Smokers,' (Frank Statement), challenged the theory that cigarette smoking is in some way linked with lung cancer in human beings (Minnesota Tobacco Trial; REPORT OF SPECIAL MASTER: FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS REGARDING NON-LIGGETT PRIVILEGE CLAIMS. February 10, 1998 – hereafter 'The Report of the Special Master')." In the 'Frank Statement,' the non-settling defendants made the following statements, among others:

We accept an interest in people's health as a basic responsibility,
paramount to every other consideration in our business.

We always have and always will cooperate closely with those whose task it is to safeguard the public health.

We are pledging aid and assistance to the research effort into all phases of tobacco use and health.

The "Frank Statement" also made three specific promises:

1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies.

2. For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as Tobacco Industry Research Committee.

3. In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition, there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities.

The Tobacco Industry Research Council (TIRC) became known as the CTR. CTR was meant to serve primarily a public relations function and

CTR scientific research was of little value in addressing issues relating to the causal link between smoking and health. "In May 1958, a BAT scientist (and others from the British tobacco industry) visited representatives of the US industry and found that: Liggett & Meyers stayed out of TIRC originally because they doubted the sincerity of TIRC's motives and believed that the organization was too unwieldy to work efficiently. They remain convinced that their misgivings were justified. In their opinion TIRC has done little if anything constructive; the constantly reiterated 'not proven' statements in the face of mounting contrary evidence has thoroughly discredited TIRC, and the SAB of TIRC is supporting almost without exception projects that are not related directly to smoking and lung cancer (The REPORT OF SPECIAL MASTER)."

1960s Results from tobacco industry laboratories supported conclusions that smoking is causally related to lung cancer and probably related to heart disease, but the tobacco industry publicly denied that the links had been proven (Glantz, et al., 1995, p. 221).

1970s Throughout the 1970's, B&W and BAT (and probably the other tobacco companies as well) privately engaged in a massive research campaign to identify and remove any toxic compounds identified in tobacco smoke. Privately, B&W and BAT scientists concluded there was no

scientific controversy about smoking being dangerous. Their goal was to create a 'safe' cigarette. However, their research showed that there were so many different toxic compounds in tobacco smoke that it would be very difficult to remove them all. Publicly, the industry continued to deny that smoking had been proven harmful to health (Glantz, et al., 1995, p. 221).

"In December 1970, the Tobacco Institute ran a statement declaring that "[f]rom the beginning, the tobacco industry has believed that the American people deserve objective scientific answers" (The REPORT OF SPECIAL MASTER). The statement also represented that 'in the interest of absolute objectivity, the tobacco industry has supported totally independent research with completely non-restricted funding' and that 'the findings are not secret (The Report of the Special Master).'"

"In 1971, the Tobacco Institute in a press release stated, in reference to finding the 'keys' which might unlock the door between statistical evidence and causation. Any organization in a position to apply resources in the search for those keys – and which fails to do so – will continue to be guilty of cruel neglect of those whom it pretends to serve (The Report of the Special Master)."

In 1972 a *Wall Street Journal* article, James Bowling, a Vice President of Defendant Philip Morris, Inc., was quoted, "If our product is

harmful. we'll stop making it. We now know enough that we can take anything out of our product but we don't know what ingredients to take out

(The Report of the Special Master) "

1980s B&W and BAT continued their effort to develop a 'safer' cigarette during the 1980s. The focus of their research was minimizing the 'biological activity,' or carcinogenic potential, of their products.

Unfortunately, this proved more difficult than expected. In addition, as the scientific community noted, even if less carcinogenic cigarettes could be designed, these cigarettes would still cause some cancer, as well as heart disease and other noncancer diseases (Glantz, 1995, p. 221).

1990s "In 1990, a public relations employee of Defendant, R.J. Reynolds Tobacco Co. (RJR) wrote a letter to a person by the name of Rook in Minnesota, apparently in response to a letter from Rook. The public relations employee asserted in that letter that, 'scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking.' The letter went on: 'Our company intends, therefore, to continue to support [research] in a continuing search for answers' (The Report of the Special Master).

Work by Battelle in the 1960s

Hypothalamic effects of nicotine

Studies using animals was undertaken by the Battelle Memorial Institute laboratory in Geneva, Switzerland. Studies called Mad Hatter Projects, Hippo I, Hippo II and Ariel took place during the late 1950's and continued through about 1967 (Slade, 1995). These studies were conducted to study the hypothalamic actions of nicotine metabolism and to determine how nicotine affects body mechanisms and causes addiction. The hypothalamic effects of nicotine include the reduction of stress, weight control, and maintenance of water balance.

Recognition by tobacco companies that nicotine is a drug

The following documents are presented as examples.

1963 Decades before the federal government was ready to declare nicotine an addictive substance, key tobacco industry officials already had reached that conclusion. They knew long ago that the power of nicotine to drive smoking behavior is crucial to the success of their product (Kessler, et al., 1997). In a memo of July 17, 1963, B&W's general counsel, Yeaman wrote, "We are, then, in the business of selling nicotine, an addictive drug," Addison Yeaman, Brown & Williamson's general counsel wrote in 1963 (Ryan/Dunn Alternate. Third version of board presentation. Fall 1969. In: 141 Cong. Rec. H7647-8 (daily ed. July 25, 1995).

Tobacco companies said that nicotine is important for its tranquilizing effects; nicotine is addictive, and what we are in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms (Slade, 1995, p. 228; {1802.05, p. 4}).

1967 Sir Charles Ellis began a meeting with B&W research in June 1967 "... We are in a nicotine rather than a tobacco industry." (Slade, 1995, p. 228; {1201.01}, p. 10). In 1967, an R&D conference in October reviewed papers {1165.01, 1165.02, 1165.03} and came to the conclusion that smoking is an addictive habit attributable to the nicotine and the form of nicotine affects the rate of absorption by the smoker. If there is no inhaling, there is no lung cancer or respiratory disease (Slade, 1995, p. 229; {1165.01, p. 2}). In the R&D conference in 1967, "it was felt that nicotine is important for the majority of smokers and that the form of nicotine can be significant" (Slade, 1995, p. 229; {1165.02, p. 6}).

1969 Dr. Helmut Wakeham, vice-president of research and development at Philip Morris in 1969, concluded: "The psychosocial motive is not enough to explain continued smoking. Some other motive force takes over to make smoking rewarding in its own right. Long after adolescent preoccupation with self-image has subsided, the cigarette will even preempt food in times of scarcity on the smoker's priority list ... We are of the

conviction... that the ultimate explanation for the perpetuated cigarette habit resides in the pharmacological effect of smoke upon the body of the smoker, the effect being most rewarding to the individual under stress (Ryan/Dunn Alternate, July 25, 1995; Kessler, 1997, p. 521)."

1972 Claude Teague of RJR asserted that "in a sense, the tobacco industry may be thought of as being a specialized, highly ritualized, and stylized segment of the pharmaceutical industry. Tobacco products, uniquely, contain and deliver nicotine, a potent drug with a variety of physiological effects... Thus, a tobacco product is, in essence, a vehicle for delivery of nicotine, designed to deliver the nicotine in a generally acceptable and attractive form. Our Industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine, and our Company's position in our Industry is determined by our ability to produce dosage forms of nicotine which have more overall value, tangible or intangible, to the consumer than those of our competitors... If, as proposed above, nicotine is the *sine qua non* of smoking, and if we meekly accept the allegations of our critics and more toward reduction or elimination of nicotine from our products, then we shall eventually liquidate our business. If we intend to remain in business and our business is the manufacture and sale of dosage forms of nicotine, then at some point we must make a stand

addiction is the most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case. We can't defend continued smoking as 'free choice' if the person was addicted (Hurt and Robertson, 1998)."

1984 In a joint R&D marketing conference in 1984, it was said, "It is accepted that nicotine is both the driving force and the signal (as impact) for compensation in human smoking behaviour (Slade, 1995, p. 230; {1226.01, p. 3})."

Recognition that smokers smoke for "satisfaction"

In a study on methods for measuring nicotine and cotinine levels in blood and urine from May 1980, it was reported that: In some instances, the pharmacological response of smokers to nicotine is believed to be responsible for an individual's smoking behavior, providing the motivation for and the degree of satisfaction required by the smoker ({1208.04, p. 2}).

Nicotine is believed to be responsible for the "satisfaction" of smoking as a result of a physiological response rather than a psychological response (Slade, 1995, p. 228, {1184.02, p. 7}). The 1967 R&D conference agreed that smoking has both physiological and psychological effects (Slade, 1995, p. 229; {1165.01, p. 2}).

Development of "safer" low tar/nicotine cigarettes used by tobacco to keep smokers from quitting

(RJR 1972, Hurt, R.D., Robertson, C.R., Prying open the door to the tobacco industry's secrets about nicotine: The Minnesota Tobacco Trial, JAMA, 280(13):1175-6, 1998) "

The concept of the cigarette as a drug delivery device may also be found in a 1972 Philip Morris document, summarizing the discussion at a conference by William L. Dunn: "The majority of conferees would accept the proposition that nicotine is the active constituent of cigarette smoke....The cigarette should be conceived not as a product but as a package. The product is nicotine. Think of the cigarette pack as a storage container for a day's supply of nicotine....Think of the cigarette as a dispense for a dose unit of nicotine....Think of a puff of smoke as the vehicle of nicotine....Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispense of smoke (Hurt, and Robertson, 1998)."

1980 "Nicotine's addictive properties were acknowledged internally by 1963, but a reason for continued public denial was made clear in a 1980 Tobacco Institute document from Mr. O.C. Knopick to Mr., W. Kloepper, senior vice president for public relations: 'Shook, Hardy [Shook, Hardy, and Bacon, LLP is a Kansas City, Mo, law firm that has directed legal strategy for the tobacco industry] reminds us, I'm told, that the entire matter of

Project Ariel

The code name for a new device to deliver nicotine without delivering many carcinogens and other toxins was Project Ariel. This was research by Battelle and BAT to develop an alternative delivery system to administer nicotine – a so-called safe cigarette.

Ariel relied on burning tobacco to heat a centrally arranged tube containing nicotine and an aerosol generator, a material such as water that would form an aerosol when heated and then cooled. The consumer would inhale through the central core and avoid taking in tobacco smoke. Nicotine dissolved in the droplets could be inhaled as part of the aerosol.

The patents for Ariel emphasize the importance of nicotine for the smoking experience and indicate that its action is pharmacological. It is a smoking device which will yield nicotine in an acceptable form, both psychologically and physiologically (Slade, 1995, p. 228).

Project Rio

Project Rio was a major effort to organize "safe cigarette" research that would develop cigarettes with less "biological activity" (1164.26; Hanauer, et al., p. 236). It was going on in 1984 at the same time as the Cippolone v. Liggett Group, Inc. case that the tobacco industry lost at the trial level, although the verdict was eventually overturned on appeal.

"Health reassurance" campaigns by tobacco companies

Ted Bates & Co wrote a report to guide a possible Tobacco Institute campaign. This document indicated that, "because they are still smoking, smokers are compelled to feel the government has not proved its case. If they want to hear anything, it is reassurance that smoking does not cause lung cancer - not that there is a difference of opinion (Ted Bates and Co.)."

By the 1970's, tobacco companies had begun a "new approach to marketing" which involved which involved the creation of brands and products to "reassure customers by answering to their needs." Creativity and flair were to be used. "Furthermore, advertising for low delivery or traditional brands should be constructed in ways so as not to provoke anxiety about health, but to alleviate it, and enable the smoker to feel assured about the habit and confident in maintaining it over time (Minnesota Trial Exhibit 10,585)."

Tobacco companies recognized that published tar and nicotine tables were used by the public to seek health reassurance (BAT, 1974). A Brown and Williamson document from 1977 discussed the need to "develop and successfully launch a product which distinctively positions itself as being the 'safest' alternative in smoking (Brown & Williamson, 1977)." Recitation of hard facts, however, would not accomplish the desired goal. As described by the Surgeon General, tobacco turned to "reassuring pictures, not words;

images, not information (USDHHS, A Report of the Surgeon General, 1994, p. 171)."

Compensation" when smoking lower tar cigarettes

The BAT research conference in January 1974 discussed research at the BAT laboratory in Germany, which showed that smokers adjust the way they smoke to control the levels of nicotine in their blood (Slade, 1995, p. 230). In 1975, the study was replicated and found that compensation studies conducted by Imperial Tobacco Co., a BAT Co affiliate, show that smokers adjust their smoking habits when smoking cigarettes with low nicotine and TPM (total particulate matter) to duplicate their normal cigarette nicotine intake (Imperial Tobacco Project T-8077; Slade, 1995, p. 230; {1006.01, p. 27}). They take more puffs, inhale more deeply, and smoke more of each cigarette

Examples of Tobacco's Knowledge about Addiction Issues

Literature - (Hurt and Robertson, 1998)

1. "For decades the industry knew and internally acknowledged that nicotine is an addictive drug and cigarettes are the ultimate nicotine delivery device." [summary]
2. Nicotine's addictive properties were acknowledged internally by 1963 but reasons made clear for denial in a

1980 Tobacco Institute document from P.C. Knopick to W.

Kloepfer

"Shook, Hardy... reminds us, I'm told that the entire matter of addiction is the most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case. We can't defend continued smoking as 'free choice' if the person was 'addicted' (Hurt, p. 1174).

3. In a 1978 B&W memo from H.D. Steele to M.J. McCue, Steele stated, "Very few consumers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison (Hurt, p.1175)."
4. A 1983 B&W memo noted that nicotine is the addicting agent in cigarettes (Hurt, p. 1175).
5. A 1980 Lorillard memorandum to the highest levels of the company, and marked SECRET sets a research goal, as follows, "Determine the minimum level of nicotine that will allow continued smoking. We hypothesize that below some very low nicotine level, diminished physiological satisfaction cannot be compensated for by

psychological satisfaction. At this point smokers will quit, or return to higher T&N brands (Hurt, p. 1175)."

6. W.I. Dunn (of PM) noted in 1972: "No one has ever become a cigarette smoker by smoking cigarettes without nicotine (Hurt, p. 1175)."
7. Claude Teague of RJR said in 1972: "In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry. Tobacco products, uniquely, contain and deliver nicotine, a potent drug, with a variety of physiologic effects... Thus, a tobacco product is in essence, a vehicle for the delivery of nicotine...." If as proposed above, nicotine is the *sine qua non* of smoking, and if we meekly accept the allegations of our critics and move toward reduction or elimination of nicotine from our products, then we shall eventually have to liquidate our business (Hurt, pp. 1175-1176)."

Internal documents from the Companies

1. BAT/B&W

(A) In a 1962 memo regarding the effects of smoking, BATCo scientist, Sir Charles Ellis stated. "As a result of these various researches, we now possess a knowledge of the effects of nicotine far more extensive than exists in published scientific literature (Minnesota Trial Exhibit 11,938, p. 9)." Ellis notes that BAT had identified how nicotine affects body mechanisms and causes addiction (p. 11). He proposed Project Hippo II to further investigate the mechanism of nicotine addiction (p. 13). He noted that the results of Battelle's work have been kept at high level of secrecy (p. 16) (Minnesota Trial Exhibit 11,938).

(B) A September 18, 1963 letter from B&W to BAT discussed "optimum levels" for nicotine and correlated the nicotine level in cigarettes with consumer acceptance. The letter stated: "Certainly, the nicotine level of B&W cigarettes... was not obtained by accident" and that "even now we can regulate, fairly precisely, the nicotine and sugar levels to almost any desired level management

might require (pp. 3-4) (Minnesota Trial Exhibit 10,856) "

(C) At a 1983 meeting of research directors from BAT and Philip Morris (and several foreign tobacco companies), "possible legal implications" of certain research were noted (p. 1). This document also states (p. 3): "The role of nicotine, at the relevant lower range of nicotine dosage, in perpetuating the smoking habit [is] a particularly sensitive area for the industry. ...If any study showed that nicotine was, or was not, associated with perpetuating the smoking habit, industry could well be called upon to reduce or eliminate nicotine from the product. (A heads we lose, tails we cannot win situation!) (Minnesota Trial Exhibit 11,259)."

2. **RJR**

(A) In a 1972 document, RJR scientist, Claude Teague writes, "If, as proposed above, nicotine is the *sine qua non* of smoking, and if we meekly accept the allegations of our critics and move toward reduction or elimination of nicotine from our products, then we shall eventually

liquidate our business. If we intend to remain in business and our business is the manufacture and sale of dosage forms of nicotine, then at some point we must make a stand (p. 5).” In a sense, the tobacco industry may be thought of as being a specialized highly ritualized segment of the pharmaceutical industry. Tobacco products, uniquely contain and deliver nicotine, a potent drug with a variety of physiological effects (p.1). A tobacco product is, in essence, a vehicle for delivery of nicotine designed to deliver nicotine in a generally acceptable and attractive form (p. 1). Happily, for the tobacco industry, nicotine is both habituating and unique in its variety of physiological actions; hence, no other active material or combination of materials provides equivalent satisfaction (p. 3). Only after experimenting with smoking for some period of time do the physiological “satisfactions” and habituation become apparent and needed (p. 4). Teague proposes consideration of alternate “cleaner” forms of nicotine delivery which do not involve tobacco combustion (p. 7).

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For the habituated smoker, products should be designed to emphasize nicotine satisfaction (p. 5). The non-smoker will have to be convinced by wholly irrational reasons that he should try smoking in the hope that he will for himself discover the real "satisfaction" obtainable (p. 5) (Minnesota Trial Exhibit 12,408).

3. Philip Morris

(A) In 1972 William L. Dunn, Jr. states that the majority of conferees at a recent CTR conference "accept the proposition that nicotine is the active constituent of cigarette smoke. Without nicotine, the argument goes, there would be no smoking (p. 4)." Dunn continues, "the cigarette should be conceived not as a product, but as a package. The product is nicotine. Think of the cigarette pack as a storage for a day's supply of nicotine. Think of the cigarette as the dispenser for a dose unit of nicotine (p. 5)." No one has ever become a cigarette smoker by smoking cigarettes without nicotine (p. 4). Most of the physiological responses to inhaled smoke have been shown to be nicotine related (p. 4). None of the low

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nicotine brand entries into the market have captured a substantial segment of the market (p. 4). The smoker has wide latitude in puff volume, puff interval, depth and duration of inhalation (p. 6). Smoke is beyond question the most optimized vehicle for nicotine and the cigarette the most optimized dispenser of smoke (p. 6) (Minnesota Trial Exhibit 10,423).

(B) In a 1969 document Dunn writes: "I would be more cautious in using the pharmlc-medical model - do we really want to tout cigarette smoke as a drug? It is, of course, but there are dangerous FDA implications to having such conceptualizations go beyond these walls (p. 1)" (Minnesota Trial Exhibit 10, 539)."

4. Lorillard

(A) In a 1976 memorandum by Lorillard's H.J.

Minnemayer describes how nicotine delivery to the smoker could be increased in a way that would not alter detectable levels of tar and nicotine: "[A] satisfactory low tar smoking article might be achieved by the addition of much less than was previously thought necessary. By

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spraying the blend with a small amount of nicotine, it might be possible to get the impact of a higher tar and nicotine cigarette. This might be achieved without actually changing the tar and nicotine figures one would get from untreated tobacco (p. 2) (Minnesota Trial Exhibit 10,014)."

(E) A 1980 Lorillard memorandum, to the highest levels of the company, and marked SECRET sets a research goal as follows. "Determine the minimum level of nicotine that will allow continued smoking. We hypothesize that below some very low nicotine level, diminished physiological satisfaction cannot be compensated for by psychological satisfaction. At this point smokers will quit, or return to higher T&N brands (p. 1) (Minnesota Trial Exhibit 10, 170)."

In summary, the article by Hurt and Robertson and the above sample of documents demonstrate that the tobacco companies (a) recognized nicotine as an addictive drug, (b) knew that a minimum threshold dose was required to keep smokers hooked; and (c) manipulated the amount of nicotine in tobacco products to achieve that dependence upon it.

Youth smoking issues

Smoking as a pediatric disease

After three decades of explicit health warning, over three million adolescents smoke cigarettes, and over one million adolescent males currently use smokeless tobacco (USDHHS, A Report of the Surgeon General, 1994, p. 5).

Smoking prevalence among adolescents declined sharply in the 1970s, but the decline slowed significantly in the 1980s. At least 3.1 million adolescents and 25 percent of 17- and 18-year-olds are current smokers (USDHHS, A Report of the Surgeon General, 1994, p. 9).

Adult health implications of smoking among young people

Respiratory diseases

Sustained smoking during adulthood is associated with the development of COPD and the progressive loss of lung function (USDHHS 1984, 1990). Evidence suggests that smoking during childhood may increase the risk for developing COPD in adulthood as well as at an earlier age. If one or both parents of an adolescent smoke, the effects of parental smoking on early childhood respiratory illnesses and on the growth of lung function may increase the risk of COPD (USDHHS, A Report of the Surgeon General, 1994, p. 29).

Cardiovascular disease

In adults, cigarette smoking has been causally associated with coronary heart disease, arteriosclerotic peripheral vascular disease, and stroke (USDHHS, A Report of the Surgeon General, 1983), USDHHS, A Report of the Surgeon General, 1989; USDHHS, A Report of the Surgeon General, 1994, p. 29). The recent evidence from the PDAY Research Group shows more atherosclerosis in young smokers than in young nonsmokers. The unfavorable effects of smoking on lipid levels in children may contribute to the development of atherosclerosis in young adulthood (USDHHS, A Report of the Surgeon General, 1994, p. 29).

Cancer

The multistage concept of carcinogenesis implies that the risk of smoking-related cancers is strongly dependent on the duration and intensity of smoking (Armitage and Doll, 1954; Doll, 1971; Taioli and Wynder, 1991 quoted in USDHHS, A Report of the Surgeon General, 1994, p. 29). Both epidemiologic and experimental evidence suggest that the risk for lung cancer varies more strongly with the duration of cigarette smoking than with the number of cigarettes smoked (Peto, 1977; Doll and Peto, 1978). If one assumes that lung cancer risk rises exponentially as a function of the duration of smoking, then the risk at age 50 for a person who began smoking

regularly at age 13 is 350 percent greater than that for a 50-year-old who started smoking at age 23 (USDHHS, A Report of the Surgeon General, 1994, p. 29).

Age at which most persons start to smoke

In a report dated February 29, 1984, marked "RJR Secret 386 Strategic Research Report, by Diane S. Burrows, named "Younger Adult Smokers: Strategies and Opportunities," a table is included as Appendix B:

Younger Adults' Importance as Replacement Smokers

Current Male Smokers By Starting Age

	Cumulative %	
	<u>Start By Age</u>	<u>Start After Age</u>
12	9.9%	90.1%
13	13.4	86.6
14	20.8	79.2
15	30.3	69.7
16	42.9	57.1
17	53.6	46.4
18	68.7	31.3
19-20	84.0	16.0
21-24	94.6	5.4
25+	100.0%	----

(Burrows, 1984).

The average teen smoker has his/her first whole cigarette by age 13, and became a daily smoker by age 14.5 (Teenage Attitudes and Practices Survey, 1993) (Allen, 1991; Moss, 1992).

Smoking and smokeless tobacco use are almost always initiated in adolescence (USDHHS, A Report of the Surgeon General, 1994, p. 8).

Nearly all first use of tobacco occurs before high school graduation, this finding suggests that if adolescents can be kept tobacco-free, most will not start using tobacco (USDHHS, A Report of the Surgeon General, 1994, p.

5). People learn to smoke early, or they do not learn at all. About 90 percent of all smokers start by age 18, and 71 percent of those had begun smoking daily by or at age 18 (USDHHS, A Report of the Surgeon General, 1994, p 65).

Factors which influence youth smoking

The most powerful predictor of smoking status is educational level (Pierce, et al., 1989). The decline in smoking status in the 90s has been attributed to a decrease in the social acceptability of smoking, the increased cost of cigarettes and the increased awareness of the health consequences of active and passive smoking.

Youth are put at increase risk of initiating tobacco use by socio-demographics, environmental and personal factors. Cigarette advertising plays an important role in determining youth initiation of tobacco use by affecting young people's perception of the pervasiveness, image and function of smoking (USDHHS, A Report of the Surgeon General, 1994).

Sociodemographic factors associated with the onset of tobacco use include being an adolescent from a family with low socioeconomic status (USDHHS, A Report of the Surgeon General, 1994, p. 9).

Environmental risk factors for tobacco use include:

- Accessibility and availability of tobacco products,
- Perceptions by adolescents that tobacco use is normative,
- Peers and siblings' use and approval of tobacco use,
- Lack of parental support and involvement as adolescents face

the challenges of growing up (USDHHS, A Report of the Surgeon General, 1994, pp. 9-10).

Behavioral risk factors for tobacco use include:

- Low levels of academic achievement and school involvement
- Lack of skills required to resist influences to use tobacco,
- Experimentation with any tobacco product (USDHHS, A

Report of the Surgeon General, 1994, p. 10).

For smokeless tobacco use, insufficient knowledge of the health consequences is also a personal risk factor (USDHHS, A Report of the Surgeon General, 1994, p. 10).

Access

In the past, children have easy access to tobacco products. Studies throughout the nation find that underage children can purchase cigarettes 70 - 80 percent of the time over the counter, and 90 - 100 percent through vending machines (Altman, 1989).

The tobacco industry sells \$1.26 billion in tobacco products each year to children under the age of 18 - over one billion packs of cigarettes and 26 million canisters of chewing tobacco (DiFranza, J, 1990). In 1991, almost 3 million US adolescents 12 - 18 years of age, smoked over 28 million cigarettes a day despite the fact that all states now ban the sale of tobacco products to persons under the age of 18.

Addiction among youth smokers

Dr. David Kessler, former head of FDA, reporting in the Journal of Pediatrics (1997), states that "nicotine addiction is a pediatric disease." The issue should not be about adults quitting, but about children starting. Every day in the US another 3000 children and teens become regular smokers (one million new smokers each year) (Institute of Medicine Report, 1994). One-third of them will eventually die from this use (CDC, Office on Smoking and Health, 10/95).

Tobacco use among adolescents increased in the 90s after experiencing decreases in the 70s and 80s. Data from the 1997 Monitoring

the Future study indicated that past-month smoking among 8th, 10th and 12th graders was 19.4, 29.8 and 36.5 percent respectively. The rates represent increases of 120 to 40 percent since 1991. Data from the Centers for Disease Control and Prevention (CDC) Youth Risk Behavioral Survey (YRBS) reveal that past month smoking among 9th to 12th graders rose from 27.5 percent in 1991 to 36.4 percent in 1997 (CDC, YRBS, 1997).

Most adolescent smokers are addicted to nicotine and report that they want to quit but are unable to do so; they experience relapse rates and withdrawal symptoms similar to those reported by adults (USDHHS, A Report of the Surgeon General, 1994, p. 5).

The initiation and development of tobacco use among children and adolescents progresses in five stages:

1. Forming attitudes and beliefs about tobacco
2. Trying tobacco
3. Experimenting with tobacco
4. Regularly using tobacco
5. Addiction to nicotine (USDHHS, A Report of the Surgeon General, 1994, p. 9).

Of all drug users surveyed by the NIDA, cigarette smokers were by far the most likely to report experiencing various features of addiction.

Studies of 12 - through 17-year-olds comparing use of cigarettes, alcohol, marijuana and cocaine found that:

	<u>Cigarettes</u>	<u>Alcohol</u>	<u>Marijuana</u>	<u>Cocaine</u>
<u>Daily users</u>	27 %	6 %	18 %	14%
<u>Felt dependent</u>	20 %	5%	10 %	6 %

(USDHHS, A Report of the Surgeon General, 1988; Henningfield, 1990;

(USDHHS, A Report of the Surgeon General, 1994, p. 36)

Cigarette smoking is also, by far, the drug use most commonly associated with withdrawal symptoms. Thus, cigarette smoking not only occurs early in the progression of drug use, it appears to be the first of these drugs to produce features of addiction in young people (USDHHS, A Report of the Surgeon General, 1994, p. 36).

Although basic pharmacologic research on nicotine has been conducted primarily with adults, most people begin to smoke in adolescence and develop characteristic patterns of nicotine dependence before adulthood (USDHHS, A Report of the Surgeon General, 1988; USDHHS, 1991a).

That adolescents develop physical dependence, as evidenced by their experience of withdrawal symptoms, has been well documented by the NHSDA (USDHHS, 1991c). Moreover, quantitative characteristics of the withdrawal syndrome appear to be the same in adolescents and adults.

(McNeil, et al , 1986. McNeil, et al , 1987; USDHHS, A Report of the Surgeon General, 1994, p. 33)

Advertising as a factor in youth smoking

Dr. David Kessler reports, "According to a recently published book on the tobacco industry, a sales representative in Florida described a question-and-answer period at an RJR regional sales meeting in which a headquarters executive was asked exactly who the young people were that were being targeted - junior high school kids or younger? The executive answered, "They got lips? We want 'em (Kessler, 1997; Hiltz, 1996)."

Young people continue to be a strategically important market for the tobacco industry (USDHHS, A Report of the Surgeon General, 1994, p. 10).

One industry official concluded 24 years ago, "Realistically, if our Company is to survive and prosper, over the long term, we must get our share of the youth market (Teague, 1976)."

Since most smokers try their first cigarette before age 18, young people are the chief source of new consumers for the tobacco industry, which each year must replace the many consumers who quit smoking and the many who die from smoking-related diseases (USDHHS, A Report of the Surgeon General, 1994, p. 8). If a person does not begin to smoke before age 19, it is unlikely that s/he will be a life-long smoker.

Cigarette advertising appears to increase young people's risk of smoking by affecting their perceptions of the pervasiveness, image, and function of smoking (USDHHS, A Report of the Surgeon General, 1994, p. 6). Since misperceptions in these areas constitute psychosocial risk factors for the initiation of smoking, cigarette advertising appears to increase young people's risk of smoking (USDHHS, A Report of the Surgeon General, 1994, p. 10).

Cigarette advertisers frequently use images of youthful activities, independence, healthfulness, and adventure seeking (USDHHS, A Report of the Surgeon General, 1994, p. 8). Even though advertising on radio and TV has been barred since 1971, billboards, point-of-sale displays, sporting events, and public entertainment still reach children and adolescents. They may use youthful models or cartoon characters that appeal to children (USDHHS, A Report of the Surgeon General, 1994, p. 8).

Cigarette advertisements capitalize on the disparity between an ideal and actual self-image and imply that smoking may close that gap. Marketing strategies are used to make adolescents feel they are members of the 5 "S" Club: These are slim, sexy, sophisticated, sociable and successful.

Of the three million billboards across the country, 30 percent carry ads for tobacco and alcohol products (Institute of Medicine, 1994, pp. 3, 105,

111. 112. 116) Despite the tobacco industry's own guidelines to the contrary (Tobacco Institute, December 1990), billboards with tobacco ads appear near places frequented by children, such as schools and playgrounds (Bailin, April 19, 1996).

"Regardless of intent, tobacco advertising appears to be chillingly effective. Children are starting to smoke at earlier and earlier ages, and despite a decline in adult smoking, adolescent smoking is on the rise (USDHHS, CDC, 1993). Data reported in December 1995 showed that the proportion of eighth and tenth graders who said they had smoked during the 30 days before the survey had risen by one third since 1991, to about 19 percent and 28 percent, respectively" (Johnson, et al., Results from the 1995 Monitoring the Future Survey Briefing for Donna E. Shalala, PhD, Secretary of Health and Human Services, Rockville, MD: National Institute on Drug Abuse, December 13, 1995, quoted in Kessler, 1997).

A 1991 study showed that an estimated 516 million packs are consumed by young people every year, almost half of these packs are sold to minors (FDA, 1995).

Brand preference data indicate that teens are nearly three times more likely than adults to smoke the most heavily advertised brands of cigarettes. Eighty-six percent of teens compared to 35 percent of adults smoke the three

most heavily advertised brands (Marlboro, Camel and Newport) (USDHHS, CDC, MMWR 1994). By 1990, domestic cigarette advertising and promotional expenditures grew to almost \$4 billion (USDHHS, A Report of the Surgeon General, 1994, p. 160 et al).

"Old Joe," the cartoon camel used to advertise Camel cigarettes, is as familiar to 6-year-old children as Mickey Mouse's silhouette. A study found that 91 percent of 6-year-olds not only recognized the Old Joe image, but were able to correctly link him with cigarettes. This was the same recognition level measured for the Disney icon (Fischer, et al., 1991).

Summary

Cigarette smoking is a pediatric nicotine addiction. The initiation and development of tobacco use among children occur in stages from the forming of attitude and beliefs about tobacco to trying, experimenting, regular use, and finally, addiction to nicotine.

The tobacco industry advertises and markets to adolescents, as these young people are a strategic market for the tobacco industry. One industry official concluded 24 years ago, "Realistically, if our Company is to survive and prosper, over the long term, we must get our share of the youth market (Teague, 1976)." More than 80 percent of the adults who smoke initiated smoking as teenagers. There is strong brand loyalty, and adolescents

consistently smoke the most advertised brands of cigarettes. Cigarette advertising uses images rather than information to portray smoking as having all the characteristics desired by adolescents: slim, sexy, sociable, successful, sophisticated. Cartoon characters followed by human models are used to convey independence, healthfulness, adventure seeking, and youthful activities. Tombstone advertising is least effective. Cigarette advertising capitalizes on the disparity between an ideal and actual self-image and implies that smoking may close the gap. It also appears to affect young people's perception of the pervasiveness, image, and function of smoking. Banning of advertising in Canada and Norway decreased smoking rates of young people in those countries (Johnson, Bachman, and O'Malley, 1987; USDHHS, CDC, 1998).

Thus, it is my opinion based upon the preponderance of scientific data reviewed that cigarette smoking is a pediatric nicotine addiction. The 3000 new smokers per day that are necessary to replace those who quit smoking or die from smoking-related consequences are, for the most part, those who begin to smoke at less than 19 years of age.

Smoking and African Americans

Smoking patterns among African Americans

Smoking Prevalence

The prevalence of smoking among blacks has been reported as higher than among whites although the intensity of smoking is less among blacks (Harris, 1993; Richardson 1997)

Black Americans and quitting

Black Americans quit more often than whites; however, whites are more likely to continue not to smoke. Overall, the proportion of quitters is lower for blacks than for whites. In 1987, the quit ratio (proportion of persons who have ever smoked cigarettes and who have stopped smoking) was 31.5 percent for blacks and 46.4 percent for whites (Report of the Surgeon General, 1998; Sullivan, 1988).

Since 1974, the rate of increase in the quit ratio has been the same for blacks and whites (Report of the Surgeon General, 1998; Sullivan, 1988).

Among men, the quit ratio for blacks is lower in every age category than for whites (Report of the Surgeon General, 1998; Sullivan, 1988).

The quit ratio is lower for black women under age 65 than for white women in this age group. Among women age 65 or older, the quit ratio is similar for blacks and whites (Report of the Surgeon General, 1998; Sullivan, 1988).

Black smokers are more likely than white smokers to have quit for at least one day during the previous year. Blacks, however, are less likely than

whites to remain abstinent for one year or more (Report of the Surgeon General, 1998; Sullivan, 1988).

Preferred brands

Black smokers are much more likely to smoke menthol cigarettes than white smokers. Estimates of the extent of preference for menthol brands among blacks range from over fifty percent to as high as ninety percent (Report of the Surgeon General, 1998; Richardson, 1997; Clark, 1996; McCarthy, 1995).

African Americans and advertising

Cigarette companies heavily target mentholated cigarette advertising to blacks. For example, mentholated brands are more commonly advertised in black-oriented than in white-oriented magazines (Davis, 1987; Report of the Surgeon General, 1998).

Cigarette companies advertise heavily in popular black magazines, but they also successfully target the African American community by sponsoring entertainment, sporting, and cultural events and political and literacy campaigns (Report of the Surgeon General, 1998; Davis, 1987).

Billboards advertising tobacco products are placed in African American communities four to five times more often than in white communities. In 1985, tobacco companies spent \$5.8 million for

advertisements on eight-sheet billboards in African American communities, accounting for 37 percent of total advertising in this medium (Report of the Surgeon General, 1998; Davis, 1987).

Black magazines receive proportionately more revenues from cigarette advertising than do other consumer magazines. In 1987, tobacco and smoking accessories accounted for only 6.1 percent of advertising in 166 consumer magazines; the percentages of cigarette advertising were higher in black magazines.

Jet	10.2 percent
Essence	9.2 percent
Ebony	7.5 percent

(Report of the Surgeon General, 1998)

Excess disease risk among African Americans due to smoking

Cigarette smoking is a major public health problem. The epidemiological studies consistently indicate that the risk of lung cancer increases with the number of cigarettes smoked and the length of time a person smokes.

The population based cancer registries operated by the National Cancer Institutes (NCI) and Surveillance, Epidemiology and End Results (SEER) data show that African American men have had consistently higher

lung cancer incidence rates than white men since the 1970s (USDHHS, A Report of the Surgeon General, 1998, Tobacco Use Among US Racial/Ethnic Minority Groups, p. 138; Kosary, SEER, 1995). Between 1950 and 1960, age-adjusted data rates for malignant neoplasm of the respiratory system (primarily lung cancer) among African American men surpassed those among white men and have since remained higher, whereas death rates for African American women have remained fairly similar to those of white women (National Vital Statistics System in Table 1, Chapter 3 USDHHS, A Report of the Surgeon General, 1998; USDHHS, National Center for Health Statistics [NCHS], 1997).

The 1989 Surgeon General's Report and more recent reports have concluded that 87 percent of lung cancer deaths is caused by cigarette smoking. Variations in lung cancer patterns between racial and ethnic groups was thought to more likely reflect differences in smoking patterns.

The age-adjusted lung cancer death rate was 81.6/100,000 population for African American men as compared to 54.9/100,000 for white men. The lung cancer death rate for African American women (27.2/100,000) was similar to that for white women (27.9/100,000) and higher than that for other racial groups. The combination of less cessation and higher peak prevalence, and longer duration of smoking in African American men after

the 1940s may explain the higher mortality rates (USDHHS, A Report of the Surgeon General, 1998).

Lung cancer death rates have been much lower for women than for men, reflecting the historically lower smoking prevalence. Rates have risen more slowly with age in older birth cohorts (Thun, 1995).

African Americans and white women indicated similar patterns of smoking initiation, maintenance and quitting, and lung cancer. Lung cancer death rates are also similar (Shopland, 1995).

Investigators have postulated that the more frequent smoking of menthol cigarettes by African Americans compared to whites may contribute to their increase rates of lung cancer (Harris, et al., 1993; Sidney, 1995; Richardson, 1997). However, the results of several investigations have not been consistent (Carpenter, 1999). In a comparison of smoking behavior associated with mentholated cigarettes and regular cigarettes, higher mean puff volume and higher puff frequency were noted, but no difference in mean expired carbon monoxide was found, suggesting mentholated cigarettes may promote lung permeability and diffusibility of smoke constituents (McCarthy et al, 1995).

Other studies have examined the role of genetics in determining the risk of lung cancer among African Americans. One of these studies

evaluated glucuronidation of tobacco specific metabolites. Glucuronidation is considered a detoxification pathway because it increases the water solubility of a chemical substrate and facilitates excretion (Goldstein and Fafetto, 1993). The rates of conjugated metabolites to free metabolites of a tobacco-specific nitrosamine were 30 percent higher in the urine of white smokers than in African American smokers. This finding suggests that African Americans are at higher risk from nitrosamine exposure during smoking because of a decreased capacity to detoxify carcinogenic tobacco-specific nitrosamines. Variability in glucuronosyltransferase activity or in clearance of glucosamide conjugates may increase cancer risk.

In summary, increased rates of lung cancer in African American men are consistent with historic patterns of cigarette smoking in this century (Shopland, 1995). In addition, African American men age 40 to 54 years may be more susceptible to lung carcinogens because they detoxify them differently and are less likely to have access to health care, lower socioeconomic conditions and lower education attainment.

In addition to the increased age-adjusted death rate for trachea, bronchus and lungs for African American men, they have an increased death rate for smoking related causes for lips and oral cavity, esophagus, stomach,

pancreas, larynx, and cerebrovascular disease (USDHHS, A Report of the Surgeon General, 1998)

Addiction Patterns Among African Americans

Persons of all racial/ethnic backgrounds are vulnerable to becoming addicted to nicotine. Levels of serum cotinine (a biomarker of tobacco exposure) are higher in African American smokers than in white smokers for similar levels of daily cigarette consumption. Racial differences in nicotine metabolism have been suggested as a part of the explanation for lower smoking cessation rates and higher disease risk among African Americans (Wagenknecht, 1990; Caraballo, 1998; Perez-Stable, 1998).

Tobacco use is determined by several factors. These include 1) perceptions, self-image, peers; 2) social factors (societal norms); 3) environmental factors such as advertising and economics; 4) cultural factors such as traditional uses of tobacco acculturation and the historical context of the tobacco industry in various communities. The economic influences include the tobacco industry support for minority communities, employment opportunities, targeted advertising revenues, high level of tobacco advertising and promotion of tobacco products in minority magazines and radio, as well as support for sports and cultural events.

Years of potential life lost (YPLL)

Smoking-attributable YPLL is the sum of years of life lost for deaths attributed to smoking for all diagnoses related to smoking.

Studies conducted by the Centers for Disease Control report that black Americans have not only a higher death rate from cigarette smoking than do whites, but have a greater loss of productive years of life.

African Americans tend to become ill from smoking at younger ages than do whites.

In 1988, African Americans lost an estimated 268,437 years of potential life to age 65 due to smoking. Whites lost an estimated 913,943 years (The US Census reported that African Americans comprised 12 percent of the total population in 1990)

Although whites lost more years in total, the rate of smoking-attributable YPLL (before age 65 per 100,000 persons, greater than or equal to 35 years of age) for African Americans (2472) was twice that for whites (1225).

Summary

In summary, African Americans are at increased risk of the health consequences of tobacco smoking. National Health Surveys of adult use of tobacco find that the knowledge-base of African American smokers as to the health consequences of tobacco is less than for all Americans; the "quitting" rates for African Americans is lower than whites; African Americans have a poverty rate of 28 percent as compared to a poverty rate of 11 percent for whites and there is an increase in quitting based upon income and educational attainment. The cigarette industry has targeted the African American community in advertising and promotions. In addition, minorities have less access to health care, entering into treatment late and less likely to have the same quality of health care.

- Black men and women have a higher incidence of respiratory system cancers than do white men and women.
- This trend also is present for incidences of esophagus and oral cavity cancer.
- The average (annual age-adjusted) mortality is higher among black men than among white men for cancers of the respiratory system, heart disease, and stroke

- The death rates for black women are higher than for white women for cancers of the respiratory system, heart disease, and stroke
- In 1988 nearly 48,000 African Americans died from smoking-attributable causes – these are deaths that could have been prevented (Sullivan, L. W., USDHHS, 1988)
- Smoking-attributable deaths among African American men are double those among African American women. This ratio is not as high among white men and women.
- The death rate due to smoking for African American men is triple that for African American women, and 1.3 times higher than the death rate for white men. The death rate from smoking for white men is double that for white women.
- The death rates for white women are higher relative to those of African American women.

(Sullivan, USPHS 1988)

Thus, it is my opinion that the cigarette industry takes advantage of a less well-informed, poor, under educated population to promote a product that is addictive and has major health consequences.

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EXHIBIT

Personal Statement

My name is M. Joycelyn Elders. I reside at [DELETED]

I am 66 years of age. I have been asked by Forman, Perry, Watkins, Krutz and Tardy to present an overview of the health consequences of tobacco smoking, nicotine addiction, tobacco use among young people and tobacco use in African Americans.

Qualifications

I am a Professor Emeritus at the University of Arkansas School of Medicine. I was a Pediatric Endocrinologist, having served as a clinician, educator, and researcher at this university from 1964 until 1987.

I attended the University of Arkansas Medical School (UAMS), Little Rock, Arkansas. After graduation in 1960, I was an intern at the University of Minnesota Hospital in Minneapolis and did a pediatric residence and an endocrinology fellowship at the University of Arkansas Medical Center in Little Rock. I ascended the academic ladder to full professorship after fellowship and board certification. I also hold a Master of Science degree in biochemistry.

Based on studies of growth in children and the treatment of hormone-related illnesses, I have written many articles for medical research

publications. I was appointed Director of the Arkansas Department of Health in October of 1987. While serving as director, I was elected President of the Association of State and Territorial Health Officers.

I was nominated as Surgeon General of the U.S. Public Health Service by President Clinton on July 1, 1993, confirmed by the Senate, September 7, and sworn in on September 8. I served in this post until January 1995 following which, I returned to teaching until retirement on June 30, 1998.

I have been active in civic affairs as a member of the Little Rock Chamber of Commerce, Northside YMCA, and Youth Homes. I was listed in "100 Outstanding Women in Arkansas," "Personalities of the South," and "Distinguished Women in America." I have won awards such as the Arkansas Democrat's Woman of the Year, the National Governor's Association Distinguished Service Award, the American Medical Association's Dr. Nathan Davis Award, the De Lee Humanitarian Award, and the National Coalition of 100 Black Women's Candace Award for Health Science. I have also received multiple honorary doctor of medical sciences degrees and honorary doctor of letters degrees.

While serving as health director for the state of Arkansas, and as the Surgeon General, my major focus was the prevention of disease and the improvement of the health outcomes of all of our citizens.

Report on Smoking 91

Since smoking is the major preventable cause of excess death in the United States, I frequently spoke out on this issue. While serving as Surgeon General, the Surgeon General's report on Preventing Tobacco Use among Young People was published. I made television appearances regarding the health consequences of smoking, testified before Congress on the dangers of second hand smoking and was active in promoting the nicotine patch to encourage people to quit smoking. The document: Report on Tobacco, M. Joycelyn Elders, MD, is based on a review of scientific literature, Surgeon General's reports, tobacco documents, the Minnesota trial, and other available documents. Due to the vast literature on tobacco related diseases, and the large number of tobacco documents, it is not possible to refer to all of them. However, I have attempted to provide citations to sources in support of my opinions. The information derived from these scientific and internal documents form the basis of my opinions. The opinions in this report are expressed to a reasonable degree of medical and scientific certainty.



M. Joycelyn Elders, M.D.

DISCIPLINE: Medicine (Pediatrics), Biochemistry

M. Joycelyn Elders, M.D.

Address: Arkansas Children's Hospital
800 Marshall Street
Springer Bldg. - Slot 512-6
Little Rock, AR 72202
501-320-1430

Position: Professor of Pediatrics, Division of Endocrinology, University of Arkansas for Medical Sciences
Formerly - U.S. Surgeon General, Washington, DC.

Comments: Prominent (to some people, notorious) physician and pediatrician, former U.S. Surgeon General. Sixty-two years old, has received numerous honors, awards, and appointments. Her expertise is not specifically relevant to the Avondale litigation, but her recognition factor is high, she communicates well and is amply qualified to address general questions concerning medical causation and exposure thresholds. Extremely full calendar, however, and may have limited time to offer.

**Biography and
Representative
Publications:**

See enclosed curriculum vitae.

M. JOYCELYN ELDERS, M.D.
Former U.S. Surgeon General

A native of Schazl, AR, Dr. Elders is the oldest of eight children. Now a pediatric endocrinologist, she never saw a physician prior to her first year in college. At the age of 15 she received a scholarship from the United Methodist Church to attend Philander Smith College in Little Rock, AR. Upon graduation at age 18, she entered the U.S. Army as a first lieutenant and received training as a physical therapist.

Dr. Elders attended the University of Arkansas Medical School (UAMS) on the G.I. Bill. After graduation in 1960, she was an intern at the University of Minnesota Hospital in Minneapolis and did a pediatric residency and an endocrinology fellowship at the University of Arkansas Medical Center in Little Rock and she ascended the academic ladder to full professorship after her fellowship and board certification in 1976. She also holds a master of science degree in biochemistry.

Dr. Elders joined the faculty at UAMS as a professor of pediatrics and received board certification as a pediatric endocrinologist in 1978. Based on her studies of growth in children and the treatment of hormone-related illnesses, she has written many articles for medical research publications. She was appointed Director of the Arkansas Department of Health in October of 1987. While serving as director, she was elected President of the Association of State and Territorial Health Officers.

Dr. Elders was nominated as Surgeon General of the U.S. Public Health Service by President Clinton on July 1, 1993, confirmed by the Senate September 7 and sworn in September 8. She resigned from this post in December 1994 to continue her professional career at the University of Arkansas School of Medicine.

Dr. Elders has been active in civic affairs as a member of the Little Rock Chamber of Commerce, Northside YMCA and Youth Homes. She was listed in "100 Outstanding Women in Arkansas," "Personalities of the South" and "Distinguished Women in America." She has won awards such as the Arkansas Democrat's Woman of Year, the National Governor's Association Distinguished Service Award, the American Medical Association's Dr. Nathan Davis Award, the De Lee Humanitarian Award, and the National Coalition of 100 Black Women's Candace Award for Health Science.

Dr. Elders has also received multiple honorary doctorate of medical sciences degrees and honorary doctorate of letters degrees.

She is married to Oliver Elders. The Elders have two grown sons, Eric and Kevin.

December 1994

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**Marketing Practices
of the Tobacco Industry**

**Glenda B. Glover, Ph.D., J.D., CPA
Kimball P. Marshall, Ph.D.**

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MARKETING PRACTICES OF THE TOBACCO INDUSTRY

A. Purpose and Qualifications

Qualifications

Glenda B. Glover, Ph.D., J.D., CPA

I reside at [DELETED]

Currently, I serve as Dean of

the School of Business at Jackson State University in Jackson, Mississippi. I have over twenty years of experience in the field of business or in the academic study of business. I have a Bachelor of Science in Mathematics from Tennessee State University, a Master of Business Administration in Accounting from Clark Atlanta University, a Doctor of Philosophy in Business, Economics and Policy from George Washington University, and a Doctor of Juris Prudence from Georgetown University Law Center. I am a Certified Public Accountant and licensed to practice law.

In addition to my education, I have broad experience in the world of business and finance, and have published in the areas of marketing, accounting, and economics. My experience as a Certified Public Accountant includes interpreting and verifying the accuracy not only of the content, but of the manner of communication and the resultant meaning of the information contained in publicly communicated statements.

I have significant corporate experience in marketing communications as it pertains to investor relations. This included directing a major phase of the company's Annual Report to shareholders, its primary marketing document. I started my career in 1976 as an accountant with Arthur Andersen & Co. in Memphis, Tennessee. In 1979, I accepted a position with Potomac Electric power Company in Washington, D.C., where I remained until 1985, when I became

Senior Vice President and Chief Financial Officer for Metters Industries, Inc., where I remained until 1990. In 1990, I accepted a position as an assistant professor of accounting at Howard University where I remained until 1994. During this tenure, I served as the Chairperson of the Department of Accounting and also taught senior level accounting courses. In 1994, I accepted the position as Dean of the School of Business at Jackson State University, where I remain today. In addition, I serve on a number of boards, including corporate and government boards. A copy of my curriculum vitae is attached.

Kimball P. Marshall, Ph.D.

I reside at [DELETED]

I serve as an Associate Professor of

Marketing in the School of Business at Jackson State University in Jackson, Mississippi. I have more than 25 years of experience in the academic study and research in the fields of social science, general business and marketing. I hold a Bachelor of Arts degree with a major in Sociology from the University of St. Thomas in Houston, Texas. I hold a Master of Arts degree in Sociology and a Doctor of Philosophy degree in Sociology from the University of Florida, and Masters of Business Administration degree from Washington University. I also engaged in studies as a Post-Doctoral Fellow in Rural Sociology at Texas A&M University and studies as a Post-Doctoral Fellow in Public Administration in Gerontology and life cycle studies at Syracuse University.

In addition to my education, I have broad experience in marketing. I have been employed as a product manager and marketing research manager in the computer and telecommunications industries. I served for several years on the Board of the Marketing Management Association (formerly the Mid-West Marketing Association) and as a Senior Fellow with the Ethics Resource

Center of Washington, D.C. I have published two books and many professionally refereed articles in a variety of professional academic journals associated with marketing, social and marketing research, general business topics, business ethics and business education, and I have presented numerous papers at many professional academic meetings associated with same topics. Since 1992 I have served as an Associate Professor of Marketing at Jackson State University where I am a member of the tenured faculty. A copy of my academic vitae is attached.

Purpose

We have been asked by Owens Corning to assess and testify concerning the marketing and public relations tactics and strategies of the tobacco industry and its participating companies.

Specifically, we have reviewed and relied on industry, government, and academic documents and reports, including, but not limited to, the documents referenced herein, dating back as early as the 1930s. We also have reviewed and relied on documents and reports produced by the public relations affiliates of the tobacco industry, and other similar documents from the participating industry firms. Using these facts and analyses, we determined from this research whether the industry engaged in deceptive, dishonest, and misleading public relations campaigns regarding the health and disease effects of tobacco; whether the industry made misleading health claims or provided health reassurance messages in its marketing campaign with the intention of recruiting new smokers and preventing smokers from quitting; and whether the tobacco industry targeted and exploited vulnerable populations such as youth, African Americans, blue collar workers, and women. We have provided representative citations to certain sources and literature in support of the opinions and conclusions stated herein, but it would be impossible to include all such citations and these citations are not meant to be inclusive. We

expect to continue our review and analysis and refine our opinions over time, especially in light of new information which may become available.

Based on these facts and analysis, as well as our own education, training, research and experience, we hereby offer the following analysis and opinions, which we hold to a reasonable degree of professional certainty, and which will assist the jury in assessing the actions of the Tobacco Industry.

B. Introduction

Recognizing the potential of lost revenues and profits should the public become convinced that smoking causes disease, the Tobacco Industry has engaged in marketing and public relations campaigns designed to undermine free choice and place consumers' at greatly increased risk of painful and mortal disease. The Tobacco Industry used mis-information to discredit legitimate scientific, medical and government sources of information regarding smoking and disease and the addictive nature of tobacco cigarettes. At the same time, the Tobacco Industry engaged in extensive targeted marketing campaigns to induce new, often underage persons to start smoking and to encourage current smokers to continue.

This report draws on extensive reviews of industry documents as well as published scientific, medical, academic and government reports. These documents reveal the following:

- Since at least 1954 the Tobacco Industry has operated a systematic campaign of propaganda involving dishonest, deceptive and manipulative public relations communications which denied a causal relationship between smoking and disease and attempted to discredit legitimate scientific, medical and government information regarding linkages of disease to smoking. The Tobacco Industry made these public statements even though their own internal documents revealed that the Tobacco Industry knew that smoking caused disease. The Tobacco Industry also denied publicly that smoking was addictive, even though Tobacco Industry

documents demonstrate that the Tobacco Industry had a longstanding appreciation of the addictive nature of nicotine and cigarette smoking.

- In efforts to recruit new smokers and prevent smokers from quitting, the Tobacco Industry deliberately used deceptive, misleading and manipulative advertising and marketing devices. Recognizing that its customers were addicted to nicotine, marketing efforts also focused on facilitating smokers' rationalizations for continued smoking through "reassurance" messages in its marketing campaigns.
- The Tobacco Industry sought to recruit new smokers and targeted and exploited vulnerable market segments including Youth, African Americans, Blue Collar Workers, and Women.

C. Since at least 1954 the Tobacco Industry has operated a systematic campaign of propaganda involving dishonest, deceptive and manipulative public relations communications intended to misinform the public regarding the relationship of smoking to disease and to discredit legitimate scientific, medical and government information regarding linkages of disease to smoking. The Tobacco Industry made these public statements even though their own internal documents revealed that the Tobacco Industry knew that smoking caused disease. The Tobacco Industry also denied publicly that smoking was addictive, even though industry documents demonstrate that the Tobacco Industry had a longstanding appreciation of the addictive nature of nicotine and cigarette smoking.

By the early 1950's there was growing public concern regarding the relationship of smoking to lung disease. These concerns culminated between 1950 and 1954 as scientific and medical research findings began to be widely reported in the popular press.¹ The Tobacco Industry recognized the market risks such medical concerns could present to their product in terms of both consumer and political reactions. In response to these growing public concerns, the

¹ Doll, Richard 1998: "Uncovering the Effects of Smoking: Historical Perspective," -Statistical Methods in Medical Research, Vol. 7, 87-117; Pollay, Richard W., Jung S. Lee, and David Carter-Whitney (1992), Separate, But Not Equal: Racial Segmentation in Cigarette Advertising, Journal of Advertising, Vol. 21, No. 1 (March): 45-57; Pollay, Richard W. (1993), "Getting Good and Being Super Bad: Chapters in the Promotions of Cigarettes to Blacks," Working Paper Series, *History of Advertising Archives*; White, Colin (1990), "Research on Smoking and Lung Cancer: A Landmark in the History of Chronic Disease Epidemiology" *The Yale Journal of Biology and Medicine*, Vol. 63, 29-46.

leading members of the Tobacco Industry engaged the public relations firm of Hill and Knowlton to assist with formulating and executing a "pro cigarette" public relations campaign.² Within a few months of engaging Hill and Knowlton, the Tobacco Industry published the Frank Statement and formed the Tobacco Industry Research Council ("TIRC").³

The Tobacco Industry's goals of this campaign are graphically illustrated in documents written by members of the Hill and Knowlton firm during these early meetings with industry executives. A "Forwarding Memorandum"⁴ describes an initial outline of perceived problems and how they may be addressed:

There is only one problem -- confidence, and how to establish it; public assurance, and how to create it -- in a perhaps long interim when scientific doubts must remain. And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths -- regardless of any pooh-poohing logic -- every time they light a cigarette.

Problem 1: The very first problem is to establish some public confidence in the Tobacco Industry's leaders themselves, so that the public will believe their assertions of their own interest in public health.

Problem 2: To reassure the public, and still instinctive fears, in this interim when definitive facts for giving complete assurance are still lacking' when scientific doubts must remain; and when new "unfavorable" information can emerge from the laboratory at any time, to act as a bomb shell on the whole tobacco industry -- if it has meanwhile tried to pooh-pooh the unfavorable finding to date.

Problem 3: How to validate this message of assurance.

² Forwarding Memorandum (JH 000493).

³ Preliminary Recommendations for Cigarette Manufacturers (December 24, 1953); A Frank Statement to the Public by the Makers of Cigarettes (December 26, 1953); A Frank Statement to Cigarette Smokers (January 4, 1954). Tobacco Industry Research Committee Report of Activities through July 31, 1954 (August 17, 1954).

⁴ Forwarding Memorandum (JH 000493).

Problem 4: We must decide our own attitude toward the findings of men like Wynder, Rhoads, Ochsner, et al. We have a choice, as previously indicated of:

- (a) Smearing and belittling them;
- (b) Trying to overwhelm them with mass publication of the opposed viewpoints of other specialists.
- (c) Debating them in the public arena; or
- (d) We can determine to raise the issue far above them, so that they are hardly even mentioned; and then we can make our real case.

Problem 5: ...How can we move immediately to identify the tobacco companies completely with concern for the public good? ...

Problem 6: There is much to indicate that we have one essential job - which can be simply said: **Stop public panic, without ever getting in the position of giving false assurances, or of giving false emphases....** (*Emphasis added*).

However, the Tobacco Industry then proceeded to give false assurances for the remainder of the century. For the rest of the century the TIRC, which changed its name to the Council for Tobacco Research in 1964 and the Tobacco Institute ("Tobacco Institute"), a trade group formed in 1958 which acted on behalf of its member companies,⁵ for some time with advice from Hill and Knowlton,⁶ as well as the tobacco companies individually, operated a propaganda campaign intended to assure smokers that the Tobacco Industry would uncover the true "facts" about the health risks of smoking while also discrediting other public information regarding the relationship of smoking to lung disease.

⁵ The Tobacco Institute, Inc. -Minutes of the Seventh Meeting of the Executive Committee (July 9, 1959); Tobacco Institute press release "Richard Says Article 'Not In Accord With Fact'" (June 25, 1958); Jones Day Memo at 44-45: Tobacco, Jones, Day, Reavis & Pogue Draft: Corporate Activity Report: Part 1 (undated) (at 44-45).

⁶ Tobacco Institute Annual Meeting; Remarks by R.W. Darrow (January 28, 1965).

The campaign started with the Frank Statement,⁷ which appeared in 448 newspapers⁸ throughout the United States. Using the Frank Statement, the Tobacco Industry created a false image of trust and confidence while failing to comply with its promise to treat health as a "paramount" concern. Through the carefully worded Frank Statement the Tobacco Industry signatories presented a united front and defined a common position on health to the United States public during a period of great public concern over medical research linking smoking to lung cancer. The statement was intended to convey, and did convey that the signature tobacco companies had the health of smokers in mind and intended to provide only safe products, and also that cigarettes were safe and had not been proven dangerous:

We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business.

and

We believe that the products we make are not injurious to health.

Due to its desire to "meet the public's concern," the Tobacco Industry pledged to research "all phases of smoking and health" and to disseminate the results of such research to the public, and to establish the TIRC. Of course, the Tobacco Industry never lived up to these promises. Rather, the Tobacco Industry knowingly violated these pledges made to smokers.

The Frank Statement was the opening volley in a long term public relations propaganda campaign in which the Tobacco Industry systematically misinformed the public by repeatedly

⁷ *A Frank Statement to Cigarette Smokers* (January 4, 1954).

⁸ *A Frank Statement to the Public by the Makers of Cigarettes* (December 26, 1953).

⁹ Tobacco Industry Research Committee Report of Activities through July 31, 1954 (August 17, 1954).

denying the causal link between smoking and disease¹⁰ in order to encourage a perception of product safety. The following are illustrative examples of the Tobacco Industry's efforts:

In 1954, the TIRC published and distributed over 200,000 copies (15,000 of which were sent directly to the media)¹¹ of a white paper entitled *A Scientific Perspective on the Cigarette Controversy*¹² which contained the statement:

There is no proof whatsoever that smoking causes pulmonary disease

A 1958 Tobacco Institute Press Release quoted a letter from the President of the Tobacco Institute to the editor of Reader's Digest which stated:

Our position was and is based on the fact that scientific evidence does not support the theory that there is anything in cigarette smoke known to cause human lung cancer.¹³

A 1960 press release quoted its scientific director:

No one really knows . . . but new evidence tends to throw doubt on, rather than support, the charges against smoking as a major causative factor in this disease.¹⁴

In 1962, George Allen, the President of the Tobacco Institute, in an answer to a question on a radio program stated:

Q: Does the Institute or does anybody in the Industry feel a case has been established that smoking is connected with lung cancer?

¹⁰ Progress Report (January 15, 1954). Hill and Knowlton Document entitled *Background Material on the Cigarette Industry Client* (December 15, 1953); Preliminary Recommendations for Cigarette Manufacturers (December 24, 1953).

¹¹ Tobacco Industry Research Committee Re: Report on TIR Booklet, "*A Scientific Perspective on the Cigarette Controversy*" (May 3, 1954).

¹² *A Scientific Perspective on the Cigarette Controversy* (Carat No. 003502).

¹³ Tobacco Institute press release "*Richard Says Article 'Not In Accord With Fact'*" (June 25, 1958).

¹⁴ Tobacco Industry Research Committee press release "*New Evidence Shows Complexities of Lung Cancer, Scientists Says*" (September 27, 1960).

A: No . . . as far as I have heard anyone express himself, it is that the matter needs thorough and energetic . . . investigation.¹⁵

A 1962 Tobacco Institute Press Release reaffirmed the Tobacco Industry's "commitment" to answering questions about smoking and health, stating, in response to the Surgeon General's plans to appoint a committee to study smoking and health:

No one has a greater interest than the tobacco industry on helping medical science find solutions to the health problems of our country. The Industry has been supporting an extensive scientific research program on smoking and health since 1954 when the Tobacco Industry Research Committee was established to provide grants to independent scientists.¹⁶

In 1968, the Tobacco Institute published "The Cigarette Controversy" and disseminated 1.5 million copies by 1971 which stated:

The debate has not yet been closed; it really only has begun.¹⁷

In 1969, a CTR press release stated:

There is no demonstrated causal relationship between smoking and disease . . . If anything, the pure biological evidence is pointing away from, not toward, such hypothesis.¹⁸

In 1970, the Tobacco Institute sponsored an ad in the Washington Post which stated:

¹⁵ Mutual Broadcasting System Radio Broadcast Transcript of *The Smoking Question Part II: Cigarette Smoking and Lung Cancer* (November 18, 1962).

¹⁶ Tobacco Institute press release "George V. Allen, Tobacco Institute President, Welcomes Plan for Factual Study of Smoking and Health" (June 7, 1962).

¹⁷ *The Cigarette Controversy* - An examination of the facts by The Tobacco Institute (April 23, 1968).

¹⁸ State of Minnesota, et al. vs. Philip Morris, et al., Report of Special Master: Findings of Fact, Conclusions of Law and Recommendations Regarding Non-Liggett Privilege Claims; District Court, Second Judicial District, Court File CI-94-8565 (February 10, 1998).

The question about smoking and health is still a question.¹⁹

A 1970 Tobacco Institute press release criticized a study of the American Cancer Society, and suggested that all studies by such society were subject to doubt, stating:

Since so much of the so-called evidence about smoking and health comes from the same source, [the American Cancer Society], we wonder how much of it really has any value at all.²⁰

A 1979 Tobacco Institute Report entitled "Smoking and Health 1964-1979, the Continuing Controversy"²¹ begins:

Despite claims to the contrary, no one --in government or industry -- can explain the reported associations of smoking with lung cancer, heart disease, emphysema, low infant birth weight, and yes, even cancer of the pancreas.

Scientists have not proven that cigarette smoke or any of the thousands of its constituents as found in cigarette smoke cause human disease....

But because some agencies in the U.S. government, members of the medical profession, and others who just don't like cigarette smoke act and react as if all the claims about smoking are scientific certainties, The Tobacco Institute sets forth here certain evidence which relates to such judgements.

A 1983 Tobacco Institute Press Release criticizes a statement by the Director of the National Institute on Drug Abuse and quotes a "battery of scientific experts" who claimed that findings set forth in a bill to change cigarette warnings are "unsubstantiated and misleading" and that asking the National Institute on Drug Abuse whether smoking is addictive is "akin to asking the goat to guard the lettuce patch."²²

¹⁹ The Washington Post, *The Question About Smoking and Health is Still a Question* (December 1970).

²⁰ Tobacco Institute press release 6 p.m. Thursday December 3, 1970.

²¹ Smoking and Health 1964-1979 "*The Continuing Controversy*" (January 10, 1979).

²² Tobacco Institute press release Thursday March 17, 1983.

Individual Tobacco Companies also disseminated propaganda consistent with the TIRC and Tobacco Institute misinformation campaign:

A 1969 advertisement explaining why American Tobacco Company would not agree to a New York Times requirement that all cigarette ads contain tar and nicotine levels stated that, while there are statistics which show a relationship between smoking and lung cancer:

There are statistics associating lung cancer with divorce and even with lack of sleep . . . Therefore, we are not going to knuckle under to the Times or anyone else who tries to force us to accept a theory which, in the opinion of men who should know, is half baked.²³

In 1971 the Chairman of Philip Morris stated on the television show Face the Nation: "[w]e do not believe that cigarettes are hazardous."²⁴

In 1973, James Bowling, the President of Philip Morris stated on the television program 60 Minutes ". . . it doesn't seem to me to serve a scientific cause to act as if the case is proven when it is still very much a controversy."²⁵

A 1984 R.J. Reynolds Time magazine states: "[s]tudies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary."²⁶

In response to this ad, Ted Koppel interviewed the RJR Chairman of the Board, Edward Horrigan - a non-smoker²⁷:

Koppel - Cigarette smoking does not cause cancer, yes or no?
Horrigan - It is not known whether cigarettes cause cancer.

²³ American Tobacco Company Ad "*Why We're Dropping The New York Times*" (1969).

²⁴ Transcript of "Face The Nation" as broadcast over the CBS Television Network and the CBS Radio Network (January 3, 1971).

²⁵ Mike Wallace Interview of James C. Bowling for CBS Television Program "60 Minutes" (July 18, 1973).

²⁶ R.J. Reynolds Tobacco Company Ad "*Can We Have An Open Debate About Smoking?*" (Time Magazine February 6, 1984).

²⁷ ABC Network "Nightline" Interview (February 2, 1984).

Koppel - All right, sir.

Horrigan - It has not been causally established.

Koppel:- Cigarette smoking - no causal relationship between cigarette smoking and emphysema.

Horrigan - Despite all of the research to date, there has been no causal link established.

Koppel - No causal relationship between cigarette smoking and heart disease?

Horrigan - No. As a matter of fact, there are studies that while we are accused of being associated with heart disease, there have been studies conducted over 10 years that would say, again, that science is still puzzled over these forces.

- A 1985 RJR sponsored ad which ran in Time magazine in March 1985 states:

[T]he controversy over smoking and health remains an open one.²⁸

- A 1990 letter from Jo Spach, the manager of Public Information at RJR to a school teacher whose fifth grade students wrote to RJR protesting that RJR allows the use of its brand names on children's toys and candy cigarettes denies such use but states

Despite all research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of chronic diseases reported to be associated with smoking. The answer to these many unanswered controversies surrounding smoking -- and the fundamental causes of the diseases often statistically associated with smoking -- we believe can only be determined through much scientific research.²⁹

In addition to public statements, the propaganda misinformation campaign was advanced through comprehensive contacts with broadcast and print media commentators and editors.³⁰ At

²⁸ R.J. Reynolds Tobacco Company Ad "Cigarettes and Science" (Time Magazine March 25, 1985).

²⁹ Letter to Principal of Willow Ridge School in Amherst, NY from Jo F. Spach, Manager of Public Information at R.J. Reynolds Tobacco Company (January 11, 1990).

³⁰ Tobacco Industry Research Committee Report of Activities through July 31, 1954 (August 17, 1954); Tobacco Industry Research Committee Information Activities, August and September, 1954 (October 7, 1954).

times, the Tobacco Industry covertly caused the dissemination of the Tobacco Industry position without leaving any evidence of its participation. In late 1967, it paid a sports writer, who later was hired by one of its public relations firms to write an article, espousing the "open question" position, which was then published in True Magazine. The Tobacco Industry later reprinted and distributed over 400,000 copies of the article to doctors, educators, and other opinion leaders, without attributing the Tobacco Industry as its source. A revised version of the article was published under an alias in the National Enquirer.³¹

A 1955 "Confidential" Public Relations Report from Hill and Knowlton to the TIRC further reflects the efforts to discretely influence public opinion. For example:

Information was supplied for the article 'Phoney Cigarette Scare' in the March 23 issue of People Today; for a 'Psychologist on the Cigarette Scare' in the April issue of Popular Medicine³²

The Tobacco Industry used other subtle means to influence the debate on smoking and health. By virtue of the sheer magnitude of the monies it made available to advertising media, the Tobacco Industry discouraged the publication of general readership articles that critically presented the relationship of smoking and disease.³³ These efforts were further recognized in the Jones Day memo:³⁴

³¹ Jones Day Memo at 393-406; *Tobacco*, Jones, Day, Reavis & Pogue Draft: Corporate Activity Project: Part I (undated).

³² Hill and Knowlton Public Relations Report (April 28, 1955).

³³ Special Article, *Cigarette Advertising and Magazine Coverage of the Hazards of Smoking*, A Statistical Analysis, Kenneth E. Varner, Ph.D., Linda M. Goldenhar, Ph.D., and Catherine G. McLaughlin, Ph.D.

³⁴ Jones Day Memo at 427-430; *Tobacco*, Jones, Day, Reavis & Pogue Draft: Corporate Activity Project: Part I (undated) (Bates No. 681879254).

- In March 1974, Horace Kornegay addressed the Government Relations Committee of the American Newspaper publishers association. In preparation therefore, a memorandum was prepared for him which detailed the cigarette advertising revenues of the attendees.
- In October 1978, Kornegay addressed the Magazine Publishers Association Convention in Arizona. He informed the publishers that cigarette revenues accounted for 10 percent of all advertising revenues. In his deposition, Kornegay explained that his purpose had been to demonstrate that the publishers had an interest in their ability to continue to do business with the tobacco industry.

The misinformation campaign continued when, in the 1990's, the controversy focused sharply on the addictive nature of nicotine.

- In a 1990 interview on CNN Larry King live, a Tobacco Institute spokesperson stated:
[A]bout 95 percent of those people have quit cold turkey. They've walked away from cigarettes and they've not gone through formal treatment centers or anything else. It's not like alcoholism or drug abuse. It's not an addiction.³⁵
- In a 1992 pamphlet, Philip Morris stated:
Those who term smoking an addiction do so for ideological -- not scientific -- reasons.³⁶
- In a 1994 published statement, Philip Morris stated:
Philip Morris does not believe cigarette smoking is addictive.³⁷

³⁵ Radio TV Reports, Inc. Transcript of the Larry King Live Show re: *Targeted Advertising and Other Cigarette-Related Issues* (February 22, 1990).

³⁶ *Tobacco Issues and Answers*.

³⁷ Phillip Morris Advertisement entitled "*Smokers and Non-Smokers: Facts You Should Know*" (2023011263).

In congressional testimony in 1994,³⁸ the chief executive officers of the tobacco companies each testified under oath that cigarettes are not addictive:

- William Campbell, Philip Morris: "I believe that nicotine is not addictive, yes."
- James Johnston, Reynolds: "Mr. Congressman, cigarettes and nicotine clearly do not meet the classic definition of addiction."
- Andrew Tisch, Lorillard: "I believe that nicotine is not addictive."
- Ed Horrigan, Liggett: "I believe that nicotine is not addictive."
- Thomas Sandefur, Brown & Williamson: "I believe that nicotine is not addictive."
- Donald Johnston, American: "And I, too, believe that nicotine is not addictive."

While many industries and companies participate in public relations campaigns to mold their own image, the Tobacco Industry's activities sought to deliberately undermine the impact that legitimate scientific information might have had on decisions by actual and potential consumers regarding smoking, contrary to the promises made by the Tobacco Industry in 1954 and thereafter.³⁹

³⁸ Regulation of Tobacco Products (Part I), Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives 103rd Congress Second Session (March 25 and April 14, 1994).

³⁹ 1962 Tobacco Institute Press Release ("We in the Tobacco Industry recognize a special responsibility to help science determine the facts and we believe we are fulfilling this responsibility through the Tobacco Industry Research Committee"); 1972 Wall Street Journal article written by James Bowling of Philip Morris ("If our product is harmful...we'll stop making it. We now know enough that we can take anything out of our product, but we don't know what ingredients to take out."); 1982 Tobacco Institute statement ("Since the first questions were raised about smoking as a possible health factor, the Tobacco Industry has believed that the American people deserve objective scientific answers. The Tobacco Industry has committed itself to this task.").

Moreover, these statements were knowingly false because, internally, the Tobacco Industry conceded that both a causal connection between smoking and disease and the addictiveness of cigarette smoking had been established. In fact, the defendants and their representatives knew that cigarette smoking was probably hazardous to the health of the smoker even prior to the publication of the Frank Statement in 1954. In 1953, an R.J. Reynolds' scientist, Dr. Claude Teague, wrote a document entitled "Survey of Cancer Research with Emphasis upon Possible Carcinogens from Tobacco".⁴⁰ The survey examined literature with emphasis on studies actually or potentially related to carcinogens from tobacco. Dr. Teague wrote in his conclusions that:

The increased incidence of cancer of the lung in man which has occurred during the last half century is probably due to new or increased contact with carcinogenic stimuli. The closely parallel increase in cigarette smoking has led to the suspicion that tobacco smoking is an important etiological factor in the induction of primary cancer of the lung. Studies of clinical data tend to confirm the relationship between heavy and prolonged smoking and incidence of cancer of the lung.

(emphasis added).

By 1958, many tobacco companies believed that smoking causes lung cancer. This is demonstrated by a trip report from a trip taken in April and May of 1958 by three British scientists (including at least one from BAT, D.G. Felton).⁴¹ These gentlemen visited top officials and scientists in the U.S. tobacco industry, including those at TIRC, Liggett, Philip Morris and American. One object of the visit was to find out "the extent in which it is accepted that cigarette smoke 'causes' lung cancer." The British scientists reported widespread acceptance of causation:

⁴⁰ Survey of Cancer Research with emphasis upon *Possible Carcinogens from Tobacco*, by Claude E. Teague, Jr. (February 2, 1953).

⁴¹ *Report on Visit to U.S.A. and Canada 17th April - 12th May 1958*, by H. R. Bentley, D.G.I. Felton, W. W. Reed.

With one exception (H.S.N. Greene) [not formally affiliated with any tobacco company] the individuals with whom we met believed that smoking causes lung cancer if by "causation" we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link. In the U.S.A. only Berkson, apparently, is prepared now to doubt the statistical evidence and his reasoning is nowhere thought to be sound.

The authors concluded that there was no serious dispute that the statistical association constituted a "cause and effect" relationship:

Although there remains some doubt as to the proportion of the total lung cancer mortality which can be fairly attributed to smoking, scientific opinion in the U.S.A. does not now seriously doubt that the statistical correlation is real and reflects a cause and effect relationship.

In 1959, RJR scientist Alan Rodgman concluded that there is a "distinct possibility" that substances in cigarette smoke could have a carcinogenic effect.⁴² This was never reported to the public by the tobacco industry.

In 1962, Rodgman conducted a wholesale analysis of the epidemiological, pathological, biological and chemical data. As Dr. Rodgman stated:

The amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming, [while] the evidence challenging the indictment is scant.⁴³

In 1964, Philip Morris scientist Helmut Wakeham examined the first Surgeon General's Report -- which found that smoking was causally related to lung cancer in men -- and found that

⁴² Memorandum o Mr. Kenneth H. Hoover by Alan Rodgman, *The Optimum Composition of Tobacco and Its Smoke* (November 2, 1959).

⁴³ "The Smoking and Health Problem—A Critical and Objective Appraisal", by Alan Redgman (1962).

"little basis for disputing the findings at this time has appeared."⁴⁴ Wakeham further praised "[t]he professional approach" of the Surgeon General's committee.

In 1967, G.F. Todd of the Tobacco Research Council [the British counterpart to TRC/CTR] wrote a letter to Mr. Addison Yeaman, the vice president and general counsel of Brown & Williamson Tobacco Corporation. In his letter, Todd observed:

The only real difficulties that we encountered arose out of the unavoidable paradox at the centre of our operations - namely that, on the one hand the manufacturers control TRC's operations and do not accept that smoking has been proved to cause lung cancer while, on the other hand, TRC's research program is based on the working hypothesis that this has been sufficiently proved for research purposes. In addition, the Council senior scientists accept that causation theory . . . We have not yet found the best way of handling this paradox.⁴⁵

In April of 1970 a Gallaher scientist (Gallaher at the time was a subsidiary of the American Tobacco Co.) analyzed the Auerbach smoking dogs study. He concluded that while it is impossible to extrapolate directly from an animal lung to a human lung, "we have to bear in mind that the anatomy of the dog is relatively close to human anatomy and the type of tumor found in the dog was the same type as found in heavy smokers."⁴⁶ Thus, "[t]o sum up, we are of the opinion that Auerbach's work proves beyond reasonable doubt the causation of lung cancer by smoke, even though in an ideal situation it would have been preferable to avoid a surgical technique and allow the animals to live out their life span."

⁴⁴ *Smoking and Health Significance of the Report of the Surgeon General's Committee to Philip Morris Incorporated*, Philip Morris Research Center (February 18, 1964).

⁴⁵ Private Letter No. 15, to Addison Yeaman, Attorney and Counsel at Law, from G. F. Todd, Director, Tobacco Research Council (June 20, 1967).

⁴⁶ Gallaher Limited Memorandum Re: Auorbach/Hammond Beagle Experiment (April 3, 1970).

In October 1976, BAT scientist S.J. Green criticized the Tobacco Industry's public position on causation:

The problem of causality has been inflated to enormous proportions. The Tobacco Industry has retreated behind impossible demands for 'scientific proof' whereas such proof has never been required as a basis for action in the legal and political fields. Indeed if the doctrine were widely adopted the results would be disastrous.⁴⁷

As Dr. Green opined "It may therefore be concluded that for certain groups of people smoking causes the incidence of certain diseases to be higher than it would otherwise be."

In 1979, BAT consultant P.N. Lee labeled the Tobacco Institute publication entitled "The Continuing Controversy" "misleading."⁴⁸ He wrote that the report did not appear to understand causation.

Discussion of the role of other factors can be particularly misleading when no discussion is made of relative magnitudes of effects. For example, heavy smokers are observed to have 20 or more times the lung cancer rates of non-smokers. Sure, this does not prove smoking causes lung cancer, but what it does mean, and TA73 never considers this, is that for any other factor to explain this association, it must have at least as strong an association with lung cancer as the observed association for smoking (and be highly correlated with the smoking habit).

TA73 seems ready to accept evidence implicating factors other than smoking in the aetiology of smoking associated disease without requiring the same stringent standards of proof that it requires to accept evidence implicating smoking. This is blatantly unscientific.

In 1980, BAT⁴⁹ acknowledged that the "no causation" position was not credible:

The company's position on causation is simply not believed by the overwhelming majority of independent observers, scientists and doctors. The Tobacco Industry

⁴⁷ Cigarette Smoking and Causal Relationships (October 27, 1976).

⁴⁸ 1979 Surgeon General's Report, *Some Comments*, Author: P. N. Lee (September 2, 1979).

⁴⁹ BAT Co. Ltd., *Appreciation* (May 16th, 1980).

is unable to argue satisfactorily for its own continued existence because all the arguments eventually lead back to the primary issue of causation, and on this point, our position is unacceptable.

However, admitting causation would be a "severe constraint of the American legal position."

In 1982, BAT consultant Francis Roe once again found the Tobacco Industry position on causation "short of credibility." As he wrote, "[i]t is not really true, as the American Tobacco industry would like to believe, that there is a raging worldwide controversy about the causal link between smoking and certain disease."⁵⁰

Likewise, a substantial body of literature has been accumulated which provides overwhelming evidence that from at least the mid-1960s forward the Tobacco Industry was aware of the addictive nature of nicotine as critical to maintaining the smoking habit. Hurt, et al.⁵¹ This is clearly indicated in Claude E. Teague, Jr.'s RJR report of April 14, 1974⁵² entitled *Research Planning Memorandum on The Nature of the Tobacco Business and the Crucial Role of Nicotine Therein*. He writes:

In a sense, the Tobacco Industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry. Tobacco products, uniquely, contain and deliver nicotine, a potent drug with a variety of physiological effects....

... Nicotine is known to be a habit-forming alkaloid, hence the confirmed user of tobacco products is primarily seeking the physiological "satisfaction" derived

⁵⁰ Confidential Letter to Dr. Ray E. Thornton, Group Research and Development Center, British American tobacco Company Limited, from Dr. Francis J. C. Roe, *Comments on Draft entitled 'The Issues of Smoking'* (May 4, 1982).

⁵¹ *Prying Open the Door to the Tobacco Industry's Secrets About Nicotine—The Minnesota Tobacco Trial*; Richard D. Hurt, MD; Channing R. Robertson, PhD (JAMA October 7, 1998).

⁵² *Research Planning Memorandum on The Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (April 14, 1972).

from nicotine -- and perhaps other active compounds. His choice of product and pattern of usage are primarily determined by his individual nicotine dosage requirements

... Thus a tobacco product is, in essence, a vehicle for delivery of nicotine, designed to deliver nicotine in a generally acceptable and attractive form. Our industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine, and our Company's position in our industry is determined by our ability to produce dosage forms of nicotine which have more overall value, tangible or intangible, to the consumer than those of our competitors.

Happily for the Tobacco Industry, nicotine is both habituating and unique in its variety of physiological actions, hence no other active material or combination of materials provides equivalent satisfaction.

... It is safe to assume, however, that nicotine will retain its unique position throughout the present ten year planning period, and probably for a much longer period of time.

William Dunn of Philip Morris was more to the point in this 1972 paper: "[n]o one has ever become a cigarette smoker by smoking cigarettes without nicotine."³³

Similarly, Raleigh and Belair smokers were recognized to be addicted as indicated by a 1982 study.³⁴

Raleigh and Belair smokers are extremely addicted to smoking, and the habit of smoking is well embedded in their behavior. Smoking is primarily used to reduce negative feeling states, and to give them a sensory motor activity.

Thus, the Tobacco Industry maintained a decades long campaign to misinform the public through concerted efforts to maintain a culture of smoking by denying evidence of risk and addiction and developing pseudo-arguments to distract consumers from the scientific and

³³ "Motives and Incentives in Cigarette Smoking", William L. Dunn, Jr., Philip Morris Center, Richmond, Virginia (June 22, 1972).

³⁴ Untitled study prepared for Brown and Williamson.

medical evidence.⁵⁵ This campaign sought to establish the tobacco companies as promoting safe products with honest concern for the health of smokers, leaving smokers with the impression that they would not put products on the market if were determined that such products were not safe. Thus, the choice to smoke was not an honest informed choice; it was a choice based, at least in part upon mis-information and deception that resulted from the comprehensive, concerted effort of the Tobacco Industry.

D. In efforts to recruit new smokers and prevent smokers from quitting, the Tobacco Industry deliberately used deceptive, misleading and manipulative advertising and marketing devices. Recognizing that its customers were addicted to nicotine, marketing efforts also focused on facilitating smokers' rationalizations for continued smoking through false "reassurance" messages in its marketing campaigns.

While publicly downplaying such risks, the Tobacco Industry has long feared that smokers were concerned about the health risks of smoking.⁵⁶ In attempts to reassure smokers

⁵⁵ *Contemporary Consumer Attitudes Toward Cigarettes, Smoking, and Health: A Motivation Research Study of Developing Trends in Receptivity and Resistance* (August 1969).

⁵⁶ *Background Attitudes* (Bates No: 502030644-0657). New Product Concepts (630186789-6824). *Contemporary Consumer Attitudes Toward Cigarettes, Smoking, and Health: A Motivation Research Study of Developing Trends in Receptivity and Resistance* (August 1969). *What Have We Learned From People? -A Conceptual Summarization of 18 Focus Group Interviews on the Subject of Smoking* (May 26, 1975). Memorandum to Horace R. Kornegay from Fred Panzer re: *The Roper Proposal* (May 1, 1972). Smoking Environment Study Exploratory Research Report (September 1982). Memorandum re: *Cigarette Advertising History* (November 29, 1976). (Whiteside 1971). Memorandum to Horace R. Kornegay from Fred Panzer re: *The Roper Proposal* (May 1, 1972). Phillip Morris Inter-Office Correspondence re: Mortality in the U.S.; Perceived Risk Versus Real Risk (August 5, 1987). Brown & Williamson Market Research Report: *"Black Smokers" Attitudes toward Cigarettes and Cigarette Smoking. Demographic and Socioeconomic Differences in Beliefs about the Health Effects of Smoking* (American Journal of Public Health, January 1992). Whiteside, T., Title of Book: *Selling Death, Cigarette Advertising and Public Health*, New York, NY (Liveright 1971).

about their smoking addiction, early cigarette advertising featured express health claims⁵⁷ which the Tobacco Industry itself could not have believed.⁵⁸ Later the direction shifted from express health claims to implied health claims, relying on filters, tar and nicotine levels and even ad imagery to reassure the public that smoking is safe, or at least not so dangerous that they should quit. The Tobacco Industry was keenly aware of an advantage it possessed in the struggle to maintain and increase sales levels: Nicotine is addictive, and as such is the true product.

1. Reassurance

The need to reassure smokers was immediately recognized by Hill and Knowlton in 1953 when the Tobacco Industry formed the TIRC. Its December 1953 Preliminary Recommendation to the Cigarette Manufacturers states: "[t]he underlying purpose of any activity at this stage should be reassurance."⁵⁹ Another Hill and Knowlton document elaborates on this theme. After quoting a tobacco company executive's statement that "[i]t's fortunate for us that cigarettes are a habit they can't break", the memorandum proceeds to discuss how to keep current smokers from quitting :

The fact is, of course, that no one who has been a heavy smoker is going to benefit himself now by falling into a panic, and eliminating the pleasure and comfort of cigarettes. He might just as well go on enjoying his smoke in the interim while research pursues the facts, with full assurance that if any cancer

⁵⁷ "A Review of Health References in Cigarette Advertising 1927-1964" (Bates No. 696000888-0916). Preliminary Recommendations for Cigarette Manufacturers (December 24, 1953).

⁵⁸ Jones Day Memo at 271-272; *Tobacco*, Jones, Day, Reavis & Pogue Draft: Corporate Activity Project: Part 1 (undated) (Bates No. 681879254).

⁵⁹ *Preliminary Recommendations for Cigarette Manufacturers* (December 24, 1953).

causing agent is ever really found in tobacco, the manufacturers will quickly find a way to eliminate it.⁶⁰

Again, the Tobacco Industry did just the opposite. Although recognizing the public's and smoker's health concerns, the Tobacco Industry carried out extensive research into the psychology and sociology of smoking and used this knowledge to promote manipulative psychological rationales for smokers to discount legitimate information in cigarette purchase decisions and for continuing to smoke. While this research extensively segmented⁶¹ the current smoker market by attitudes toward smoking, and identified rationales smokers used for discounting medical, scientific and government evidence, the basic theme of reassurance⁶² remained the same.

For example:

⁶⁰ • Forwarding Memorandum to Members of the Planning Committee (Bates No. JH 000493).

⁶¹ Summary of Report of 4 Group Interview Sessions with Smokers (Bates No. LOR 92382009). *Contemporary Consumer Attitudes Toward Cigarettes, Smoking, and Health: A Motivation Research Study of Developing Trends in Receptivity and Resistance* (August 1969). *What Have We Learned From People? -A Conceptual Summarization of 18 Focus Group Interviews on the Subject of Smoking* (May 26, 1975). Viceroy- Marketing Strategy (Bates No. B&W 680113760-3763). Memorandum to Horace R. Kornegay from Fred Panzer re: *The Roper Proposal* (May 1, 1972). Smoking Environment Study Exploratory Research Report (September 1982). *Background Attitudes* (Bates No: 502030644-0657). "Smoker Psychology Research," by Dr. M. Wakeham (November 26, 1969). Phillip Morris Inter-Office Correspondence re: Mortality in the U.S.; Perceived Risk Versus Real Risk (August 5, 1987). *The Smoking Controversy: A Perspective* (December 1978). *What Have We Learned From People? -A Conceptual Summarization of 18 Focus Group Interviews on the Subject of Smoking* (May 26, 1975). Presentation (November 19, 1985). New Product Concepts (670186789-6824). B&W Market Research Report: "Why People Smoke, Brand Imagery and New Product Opportunity," (1983). Brown & Williamson Tobacco Company New Ventures Project -Consumer Views: *The "New" Smoker* (September 1974). *Contemporary Consumer Attitudes Toward Cigarettes, Smoking and Health*, prepared by Analytical Research (Canada) Ltd., Toronto, Ontario Analytical Research Institute, Peekskill, N.Y. (August 1969) (Bates No. 680082943).

⁶² *The Smoking Controversy: A Perspective* (December 1978).

A 1967 Ted Bates & Co. report for Lorillard states that, "because they are still smoking, smokers are compelled to feel the government has not proved its case. If they want to hear anything, it is reassurance that smoking does not cause lung cancer - not that there is a difference of opinion. Smokers agree that smoking is 'unhealthy' but don't translate this as meaning it causes lung cancer or any specific, potentially fatal disease. Smoking may cause shortness of breath, a cough, or even a shorter life - but they don't expect to give them lung cancer."⁶³

A 1969 study prepared for Imperial Tobacco demonstrates that the Tobacco Industry was well aware that smokers "are not convinced that a health hazard exists as far as smoking is concerned, but neither are they convinced that it doesn't. Their ambivalence in the present smoking climate has forced the development of personal rationalizations to insure smoking satisfactions."⁶⁴

A 1972 Tobacco Institute document reviewed the Tobacco Industry's strategy to "defend itself on three major fronts— litigation, politics, and public opinion." This strategy included "creating doubt about the health charge without actually denying it." It states: "In the cigarette controversy, the public—especially those who are present and potential smokers (e.g. Tobacco State Congressman and heavy smokers)—must perceive, understand and believe in evidence to sustain their opinion that smoking may not be the cause or factor." A possible new strategy was proposed, "Thus there are millions of people who would be receptive to a new message, stating: Cigarette smoking may not be the health hazard that anti-smoking people say it is *because other alternatives are at least as probable*."⁶⁵

A 1982 study prepared for RJR regarding focus groups of smokers conducted in Minnesota finds that smokers rationalize the risks of smoking and that they "discounted the statistical risk of smoking."⁶⁶

⁶³ Summary of Report of 4 Group Interview Sessions with Smokers (Bates No. LOR 92382009).

⁶⁴ *Contemporary Consumer Attitudes Toward Cigarettes, Smoking, and Health: A Motivation Research Study of Developing Trends in Receptivity and Resistance* (August 1969).

⁶⁵ Memorandum to Horace R. Kornegay from Fred Panzer re: *The Roper Proposal* (May 1, 1972).

⁶⁶ Smoking Environment Study Exploratory Research Report (September 1982).

- A 1982 RJR survey indicates that women smokers are apprehensive and anxious about smoking but many respond by championing the "freedom of choice argument."⁶⁷

Other Tobacco Industry documents reflect its awareness of the smoker's need for reassurance and the Tobacco Industry's eagerness to respond:

- A 1953 document prepared for Brown and Williamson describes the importance of reassurance in a cigarette advertising campaign:

The basic human motivations, the strongest of which is the desire for security. Hence the compelling success of campaigns such as 'No throat irritation,' 'Camels never get on your nerves,' etc. **Contrary to popular belief, advertisers do not instill fear in consumers to make them buy. They simply recognize its existence and do their best to profit by it.**"⁶⁸
[emphasis added]

- In a 1964 memorandum addressed to J.F. Cullman, later the CEO of Philip Morris, G. Weissman describes how in response to the Surgeon General's Report, "[w]e must in the near future provide some answers which will give smokers a psychological crutch and a self-rationale to continue smoking." Among the "crutches" and "rationales" proposed to be offered to the smokers were questions of medical causation, "that, more research is needed," and that there are "contradictions" and "discrepancies."⁶⁹
- A 1977 British American Tobacco memorandum reveals that the British American Tobacco group, including Brown & Williamson, hired psychologists to develop "central guidelines for consumer reassurance."⁷⁰
- In this 1984 document, Brown & Williamson contemplated how to best market to concerned smokers: "The basic question that begs a response is how do we

⁶⁷ *Background Attitudes.*

⁶⁸ "Copy of a Study of Cigarette Advertising" Ted Bates & Company, 1953, made by J. W. Burgard (1953).

⁶⁹ Letter to Joseph F. Cullman 3rd re: *Surgeon General's Report* from George Weissman (January 29, 1964).

⁷⁰ Letter to Market Research Department- Millbank re: *Organization and Staffing* (July 11, 1977).

provide smoker satisfaction from a lower tar base . . . and at the same time help our consumer rationalize his decision to smoke . . ."⁷¹

In response to its awareness of such rationalizations, the Tobacco Industry designed marketing programs to reassure smokers and facilitate such rationalizations. The intent was to create a feeling of partnership between tobacco companies and the addicted smoker such that the addicted smoker would view the Tobacco Industry and the individual company with trust, and as working in the smokers' best interest. In the Tobacco Industry's view, this would enhance the likelihood that the smoker would deny personal risk, and view scientific, medical and government concerns regarding smoking and disease with less credibility.⁷²

David C. Loomis observed from group interview sessions with smokers while doing research for RJR⁷³ that "[b]ecause they are still smoking, smokers are compelled to feel the government has not proven its case." Loomis goes on to note that smokers do not want to be reminded of health issues.

Similarly, a "depth-interviews" research project from 1969 for Imperial Tobacco Company and carried out by the Institute for Analytical Research⁷⁴ observed that the smokers

⁷¹ "Proceedings of the Smoking Behaviour" -Marketing Conference; Montreal , Quebec 9th- 12th July, 1984.

⁷² Summary of Report of 4 Group Interview Sessions with Smokers (Bates No. LOR 92382009). *Contemporary Consumer Attitudes Toward Cigarettes, Smoking, and Health: A Motivation Research Study of Developing Trends in Receptivity and Resistance* (August 1969). *What Have We Learned From People? -A Conceptual Summarization of 18 Focus Group Interviews on the Subject of Smoking* (May 26, 1975). Memorandum to Horace R. Kornegay from Fred Panzer re: *The Roper Proposal* (May 1, 1972).

⁷³ Summary of Report of 4 Group Interview Sessions with Smokers (Bates No. LOR 92382009).

⁷⁴ *Contemporary Consumer Attitudes Toward Cigarettes, Smoking, and Health: A Motivation Research Study of Developing Trends in Receptivity and Resistance* (August 1969).

need the manufacturer's approval, reassurance, rationalizations, and reinforced self-esteem in order to counter health warnings and social pressures to quit smoking, and smokers want to trust the manufacturer, and that many smokers see the filter as the ultimate solution to the smoker's dilemma regarding health and desire. In Loomis' words: "Today's smoker seeks a new covenant between himself and the tobacco industry."

Similar findings were also produced in 1975 from 18 focus groups carried out by Marketing Research Councilors for Ted Bates Advertising.⁷⁵

Thus, smokers don't like to be reminded of the fact that they are illogical and irrational.

This repression-directed defense mechanism is the basic underlying reason why people explain their reasons for smoking

The authors observe:

Believability in, and identification with a cigarette ad can be better achieved by the situation it presents rather than by the copy it features. There is very little one can say about a cigarette that could be perceived as positive, honest and believable.

In a search for ways to counter the Surgeon General's health warnings, George Weissman of Philip Morris wrote to Joseph F. Cullman in 1965⁷⁶ and suggested that Philip Morris also note that the "Surgeon General's Report also recognizes significant beneficial effects of smoking primarily in the area of mental health."

⁷⁵ *What Have We Learned From People? -A Conceptual Summarization of 18 Focus Group Interviews on the Subject of Smoking* (May 26, 1975).

⁷⁶ Letter to Joseph F. Cullman 3rd re: *Surgeon General's Report* from George Weissman (January 29, 1964).

In 1972, Fred Panzer of Lorillard wrote to Horace R. Kornegay⁷⁷ that the Tobacco Industry's past strategy for public relations in light of concerns regarding disease and smoking was brilliant in that it:

- created doubt about health charge without actually denying it;
- advocated the public's right to smoke without actually urging the to take up the practice;
- and, encouraged "objective" scientific research.

The tendency of youth smokers to minimize, deny and depersonalize the risks of disease from smoking has been noted in the *Journal of the American Medical Association*.⁷⁸ In this study by Leventhal, Glynn and Fleming, 895 K-12 students were interviewed; the authors conclude:

This suggests the operation of some non-obvious psychological process through which one's own smoking behavior or intent, or smoking by significant others, affects awareness and/or acceptance of information about smoking and health. For example, young people who smoke or who have smoking family members are less likely to believe that smoking are adverse consequences to be overcome when attempting to quit and that quitting smoking can therefore be difficult. It is possible that these youngsters are defending against the thought that either they or a parent has an uncontrollable problem, a thought that may be particularly distressing in view of the subjects' stated belief that smoking is a health hazard.

This demonstrates that the mixed signals sent by tobacco advertising and the residual effects of past advertising in creating current smokers confuses the issues in the minds of young people and provides a basis for rationalizing away well grounded fears as a psychological self-defense mechanism.

⁷⁷ Memorandum to Horace R. Kornegay from Fred Panzer re: *The Roper Proposal* (May 1, 1972).

⁷⁸ Howard Leventhal, Ph.D. Kathleen Glynn, Ph.D., Raymond Fleming, Ph.D., "Is the smoking decision an 'informed choice'? The effect of risk factors on smoking beliefs," *JAMA (Journal of the American Medical Association)*, Vol. 257, No. 24 (June 26), 1987, pp. 3373-3376, June 26, 1987)

Similarly, Brownson et al.⁷⁹ in a 1992 report in the American Journal of Public Health⁸⁰ noted that twice as many current smokers (33%) as never smokers were unaware that smoking is a cause of lung cancer and that 40% of current smokers denied the risk of heart disease. This is disconcerting in that these authors also note that the behavioral science "health belief model" holds that a person must feel susceptible to a health risk prior to changing behavior. Thus, to the extent that mis-information propaganda by the Tobacco Industry was disseminated, the health beliefs model would predict that fewer smokers would seek to and succeed at quitting.

This is brought out clearly by Ayanian and Cleary's (1999) findings from a 1995 national telephone survey of U. S. households that only 29% of current smokers believed that they have a higher-than-average risk of myocardial infarction and only 40% believed that they have a higher-than-normal risk of cancer. Moreover, among persons who smoked 40 or more cigarettes per day, only 39% and 49% acknowledged these risks respectively.

As this research proves, smokers and the public relied upon the statements made by the tobacco companies, in the form of their advertising, marketing and public relations campaigns, and did so to their detriment, with the result being that more people started to smoke and fewer people quit smoking.

2. Filters.

⁷⁹ Demographic and Socioeconomic Differences in Beliefs about the Health Effects of Smoking (American Journal of Public Health, January 1992). Whiteside, T., Title of Book: *Selling Death, Cigarette Advertising and Public Health*, New York, NY (Liveright 1971).

⁸⁰ Ross C. Brownson, Jeannette Jackson-Thompson, Joan C. Wilkerson, James R. Davis, Nancy W. Owens, and Edwin Fisher, "Demographic and socioeconomic differences in beliefs about the health effects of smoking", American Journal of Public Health, January 1992, Vol. 82, No. 1.

Early health claims emphasized filters. A review of messages in Viceroy ads illustrates this theme.⁸¹

- 1938 "Safer smoke for any throat" and "Filter guards teeth and throat"
- 1942 "The Filter Tip is Better for You."
- 1947 "19,293 DENTISTS ADVISE Smoke Viceroy's"
- 1958 refers to the "Thinking man's filter" and "Light One! Discover - Viceroy gives you more of what you change to a filter for. More filters? Yes - 20,000 filter traps in every tip. Thousands more than any other cigarette,"

Kool ads followed a similar pattern with an emphasis on smoothness of the smoke - suggesting less irritation - continuing from the 1930s through the 1950s.⁸²

- A Kool ad from 1937 pictured the Kool penguin dressed as a medical doctor while smoking a cigarette and saying "Tell him to switch to Kools and he'll be all right."
- Kool ads in the 1940s advanced the themes of switching to Kools when one had a cold or sore throat and for "Kool comfort for smoker's throat."
- In 1954 the penguin MD again appears in the ad with the admonishment to break the hot cigarette habit. This theme would also be repeated often in ensuing years.
- By 1956, Kool was promoting that filtered Kools were available with "all of the benefits of Kools plus all of the benefits of filtered smoking." This reference to benefits of filtered smoking conveyed that filters were substantially reducing the health risks associated with cigarettes, thus making smoking safe.
- In 1958, the freshness theme was introduced and in 1959 it was combined with a reassurance statement "The world's most thoroughly tested filter."

⁸¹ Memorandum from E. A. Willets, III to G. T. Reid re: "Viceroy Advertising Objectives and Creative Strategies 1936-1975" (July 19, 1976). "Kentucky Kings" - Historical and Advertising Information on Various Brand (670624430-4649).

⁸² Historical and Advertising Information on Various Brands (670624430-4649).

Similar patterns are found for other cigarettes. Parliament used a "Recessed Filter - Maximum Health Protection" slogan.⁸³ In 1959, Life was introduced with the "Millecel" filter and the claim "filters best by far! Absorbs far more tar and nicotine than any other filter."

Similar themes are found for Avalon with the "triple filter."⁸⁴

The Tobacco Industry knew that many smokers believed that filtered cigarettes were safer and exploited such beliefs in advertising.⁸⁵ However, as with other false and misleading messages regarding health issues, the Tobacco Industry was aware that filters presented no appreciable reduction in health risk.⁸⁶

3. Tar and Nicotine Levels

In addition to filters, the promotion of new "light" brands which began in the 1950's was another important tool in the health reassurance effort. A Reader's Digest Article which suggested that lower tar and nicotine levels in cigarettes were safer, helped to set off the "tar derby" during which tobacco companies sought to capitalize on this perceived health benefit by offering "light" cigarettes.⁸⁷

⁸³ Jones Day Memo at 284: *Tobacco*, Jones, Day, Reavis & Pogue Draft: Corporate Activity Report: Part 1 (undated) (Bates No. 681879254).

⁸⁴ "A Review of Health References in Cigarette Advertising 1927-1964".

⁸⁵ Jones Day Memo at 286-290: *Tobacco*, Jones, Day, Reavis & Pogue Draft: Corporate Activity Report: Part 1 (undated) (Bates No. 681879254). New Product Concepts (670186789-6824). "A Review of Health References in Cigarette Advertising 1927-1964" (Bates No. 696000888-0916).

⁸⁶ Tobacco Industry Research Committee Letter from C. C. Little to Tim Hartnett re: "tar" reduction in advertising of cigarettes (August 26, 1958).

⁸⁷ Memorandum re: *Cigarette Advertising History* (November 29, 1976).

A 1976 Lorillard document²² illustrates the Tobacco Industry's reasoning:

Health concerns are the usual reasons for switching to a low T&N [tar and nicotine] brand. Such cigarettes are "better for you"—milder and less irritating (now) as well as less likely to cause serious problems (later)....To many SHF [super high filtration] smokers, a low T&N cigarette represents a compromise smoke between a more satisfying smoke and not smoking at all.....Most "health oriented" smokers exhibit an openness to changing their cigarette brand on safety as well as other grounds. To deal with this ambivalence, they rationalize (e.g., "I may be better off smoking"), they compromise (turning to "milder" or lower tar and nicotine cigarette; trying to smoke less) and they temporize ("I'll quit when things quiet down around here").

The report concluded by saying:

This research indicates a number of directions for approaching the 'health oriented' cigarette market with viable new, improved and optimized product/marketing concepts" and outlines a way of "targeting to Health Oriented Market Segments.

The R.J. Reynolds attorneys who drafted the Jones, Day memorandum observed that "[t]he most notorious of the low tar ads which may be construed as offering low tar cigarettes as an alternative to quitting are those for True." Some examples of True advertisements:

- "Considering all I'd heard, I decided to quit or smoke True. I smoke True."
- "I'd heard enough to make me decide one or two things: Quit or smoke True. I smoke True."
- "True. Easy on your mind. Easy on your taste."

The Jones Day Memorandum indicates that True was not the only brand to make implied claims about the healthfulness of low tar cigarettes: "True was not alone. Vantage marketing documents indicate that Vantage addressed smokers' concerns about the 'alleged health hazards

²² *Prying Open the Door to the Tobacco Industry's Secrets About Nicotine— The Minnesota Tobacco Trial*; Richard D. Hurt, MD; Channing R. Robertson, PhD (JAMA October 7, 1998). Nowland Organization, Inc. SHF Cigarette Marketplace Opportunities, Search and Situation Analysis, II Management Report (December 1976).

of high tar."⁸⁹ Lorillard, in marketing Kent, also took advantage of the public misconception about the "safety" of low tar cigarettes, as did, in Lorillard's view, such brands as Hit Parade, Life, Lark, Duke, Carleton, and Tempo.⁹⁰

There is substantial evidence that labels containing tar and nicotine information are ineffective because smokers do not understand the tar and nicotine information.⁹¹ Drawing on a variety of data sources including Roper, Gallup, the Coalition on Smoking and Health, and Opinion Research Corporation, Cohen⁹² has shown the ineffectiveness of tar numbers regarding education of smokers as to relative disease risks of different tar levels. This research demonstrates that a result of providing such information is a consumer perception that lower tar cigarettes are "safer, healthier or less harmful." This is additional proof that smokers and the public relied on the Tobacco Industry marketing efforts.

The Tobacco Industry was aware that low tar and nicotine claims helped retain smokers and prevent quitting by providing a false sense of safety.⁹³ Elsewhere, extensive Tobacco

⁸⁹ Jones Day Memo at 309-312: *Tobacco*, Jones, Day, Reavis & Pogue Draft: Corporate Activity Report: Part 1 (undated) (Bates No. 681879254).

⁹⁰ Memorandum to M. J. Cramer, President, Chief Executive Officer from M. Yellen, Subject: Lorillard Sales Position (September 15, 1964).

⁹¹ *Smoker's Knowledge and Understanding of Advertised Tar Numbers: Health Policy Implications*, Joe B. Cohen PhD, American Journal of Public Health, Vol. 86, No. 1 (January 1996).

⁹² *Smoker's Knowledge and Understanding of Advertised Tar Numbers: Health Policy Implications*, Joes B. Coharum PhD, American Journal of Public Health, Vol. 86, No. 1 (January 1996).

⁹³ New Product Concepts (670186789-6824).

Industry compensation studies have been noted ⁹⁴ that reveal that smokers compensate for lower tar and nicotine by deeper puffs, more frequent puffs, and smoking more cigarettes, and so receive the same or higher levels of tar and nicotine.⁹⁵ Thus, the Tobacco Industry was well aware of smokers "compensation" even as it designed marketing programs to capitalize on the perceived health benefits of low tar and low nicotine cigarettes to provide a false sense of safety.

Notwithstanding this understanding of compensation, the Tobacco Industry has continued to promote a false sense of security through emphasizing tar and nicotine levels. For example, the booklet *Smoking Issues* published by British-American Tobacco Company claims substantial changes in cigarettes between the 1960's and 1980's particularly in the area of tar delivery. The document concludes:

There is a strong belief by many medical authorities that these product changes have been responsible for significant reductions in recent years in the occurrence of diseases which have been associated with smoking."⁹⁶

Currently, Philip Morris is actively promoting a new product, "Marlboro Milds", which states on the package: "Lower Tar and Nicotine", suggesting that such cigarettes are a safe alternative to quitting.

4. Imagery.

⁹⁴ *Some Unexpected Observations on Tar and Nicotine and Smoker Behavior* (March 1, 1974). Smoking Products Research - 25th October, 1976 to 21st January, 1977 (January 19, 1977).

⁹⁵ *Prying Open the Door to the Tobacco Industry's Secrets About Nicotine—The Minnesota Tobacco Trial*; Richard D. Hurt, MD; Channing R. Robertson, PhD (JAMA October 7, 1998).

⁹⁶ *Smoking Issues*, a British-American Tobacco Company publication for staff (undated).

In addition to express and implied health claims, as well as public relations programs which helped consumers discount, discredit and deny the personal relevance of scientific and medical findings, cigarette ads promote taste and image to reinforce the distraction from risk. Thus in the context of discussing an auto racing campaign⁹⁷ to create an image for Viceroy, a brand suffering from not having an image, a Ted Bates 1975 report notes that Viceroy is viewed by consumers as in the same category as Marlboro and Tareyton:

This category which is classified by the cigarette manufacturer as the full flavor category is viewed by smokers as a category that includes strong, tough, harsh, high tar and nicotine cigarettes.

A category that includes cigarettes that with the exception of taste (and even this is a personal preference), are the most illogical, irrational and stupid cigarettes to smoke.⁹⁸

Further in the same document, under the heading "Elements of Good Cigarette Advertising or How to Reduce Objections to a Cigarette" we find:

Believability in, and identification with a cigarette ad can be better achieved by the situation it presents rather than by the copy it features. There is very little one can say about a cigarette that could be perceived as positive, honest and believable. The good, effective cigarette advertising can at its best 'catch' the reader with the right picture and present a brand of cigarette. The picture, situation presented and the copy should be ambiguous enough to allow the reader to fill-in his/her illogical-logic which are the results of each individual defense-mechanism.

Such pictures are the imagery used in advertisements with the intention that the target of the advertisement will identify with the advertisement and find in it the promise of the rewards he or she seeks.

⁹⁷ Memorandum from E. A. Willets, III to G. T. Reid re: "Viceroy Advertising Objectives and Creative Strategies 1936-1975" (July 19, 1976)

⁹⁸ What Have We Learned From People? -A Conceptual Summarization of 18 Focus Group Interviews on the Subject of Smoking (May 26, 1975).

The Tobacco Industry used imagery in advertising copy to further its reassurance efforts. In this context, the purpose of an image is to allow people to make brand choices without being reminded of the danger in which they are placed. Thus, where smokers are pictured as active, youthful, healthy, happy and successful, the image that smoking is associated with these characteristics of people is created, and the viewer is distracted from disease risks. Similarly, when a brand is presented against a backdrop of waterfalls or other clean images, the image distracts the viewer from any illness issues of which he or she might otherwise be aware. Positive healthy images of smoking come to be created by visual association and the potential smoker receives a subtle health reassurance message. For example, Kool, a high menthol brand, is one of the major brands of the century and one that benefited from health concerns in the 1950s with its menthol flavor and filter. However, by the late 1970s, when Kool had gained 10% share of the total market and 38% of the menthol market, health and image concerns again placed Kool under pressure⁹⁹ and KOOL and Brown & Williamson determined that even at that late date

"KOOL must move into health reassurance segment so that 45% of KOOL business will be in the perceived product safety arena by 1982."¹⁰⁰

Kool later introduced a subtle, athletic image, the "biker" campaign in 1985.¹⁰¹

Similarly, Viceroy introduced the "work ethic" and "white collar values" image in the early

⁹⁹ Memorandum to P. Weinseimer (Bates) from G. T. Reid re: *KOOL New Product Advertising Strategy* (May 29, 1978).

¹⁰⁰ B&W Marketing Plan: *Kool Family Utopia Objectives, 1979-1985* (1979).

¹⁰¹ "Biker Creative Elements Research" (Bates No. 679011893-1904).

1980s.¹⁰² The effectiveness of such imagery has been noted by both the Surgeon General and the FTC.¹⁰³

5. Tobacco Industry Recognition and Manipulation of the Addicted Smoker.

A key to the Tobacco Industry's successful reassurance efforts is that smokers are addicted to nicotine.¹⁰⁴ Recognizing the nicotine demand required by smokers, the Tobacco Industry learned from its compensation studies¹⁰⁵ - that it could exploit its customers addiction even while publicly denying the addictive nature of nicotine. In addition to the reassurance

¹⁰² Viceroy Switching Study Analysis- Wave 28 (February 4, 1981). Viceroy- 1983 Key Issues (Bates No. 670106693-6961).

¹⁰³ 1994 Surgeon General's Report at 171-172: *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*, Atlanta, Georgia: U. S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1994.

¹⁰⁴ US Food and Drug Administration/ Statement on Nicotine-containing cigarettes by David A. Kessler (March 25, 1994).

¹⁰⁵ Research Proposal- Development of Assay for Free Nicotine (July 16, 1976). Memorandum re: Plastic Dilution Tipped Parliament (August 11, 1967). Memorandum re: Considerations Pertinent to the Proposed FTC Requirement of Published Numbers (August 17, 1970). Phillip Morris Research Center Annual Report entitled "*Smoker Simulation Studies*" (May 21, 1973). Phillip Morris Research Center Annual Report entitled "*Smoker Simulation Studies*" (May 21, 1974). *Some Unexpected Observations on Tar and Nicotine and Smoker Behavior* (March 1, 1974). Smoking Products Research - 25th October, 1976 to 21st January, 1977 (January 19, 1977). State of Washington v. American Tobacco, et al. -Transcript of Proceeding (October 8, 1998). "*Proceedings of the Smoking Behavior*" -Marketing Conference; Montreal , Quebec 9th- 12th July, 1984. *Compensation for Changed Delivery*, Report No. RD.1300 Restricted (January 30, 1976). *R&D Views on Potential Marketing Opportunities* (December 9, 1980/ Bates No. 109869437-9440). *Proceedings of the Smoking Behavior* -Marketing Conference July 9th-12th 1984. Phillip Morris Research on Nicotine Pharmacology and Human Smoking Behavior (April 6, 1994). RJR Inter-office Memorandum re: Data On Aggregate Annual Nicotine Consumption (August 22, 1975). Phillip Morris Research Center Special Report "*Changes in Smoker Profiles with Changes in Nicotine and Tar Deliveries, Both on and off Smoking Profile Recorders*" (March 16, 1977). *Compensation for Changed Delivery* (June 27, 1978).

benefit provided by "low delivery" cigarettes. the Tobacco Industry recognized that switching to "light" cigarettes would often lead to greater consumption of cigarettes as smokers sought to obtain the nicotine dosage desired by their bodies.¹⁰⁶ This led to the Tobacco Industry relinquishing its opposition to labeling of tar content on cigarette packages.¹⁰⁷ With lower tar labels, smokers who sought to reduce risk or to quit smoking by smoking lower tar cigarettes would have the illusion that they were receiving less tar even though, due to compensation, they were receiving about the same amount of both tar and nicotine as they did from their regular cigarettes.

E. The Tobacco Industry sought to recruit new smokers and targeted and exploited vulnerable market segments including Youth, African Americans, Blue Collar Workers, and Women.

A substantial body of evidence based on scientific, marketing, medical and government research has been compiled that documents the use of market segmentation and targeted marketing techniques by the Tobacco Industry in order to maintain the loyalty of current smokers and recruit new smokers from among African Americans, Hispanics, women, blue collar workers and youth.¹⁰⁸

¹⁰⁶ *Proceedings of the Smoking Behavior -Marketing Conference July 9th -12th 1984.* Philip Morris Inter-Office Correspondence from W. L. Dunn to T. S. Osdene re: *Plans and Objectives- 1979* (December 6, 1978).

¹⁰⁷ *Some Unexpected Observations on Tar and Nicotine and Smoker Behavior* (March 1, 1974).

¹⁰⁸ *Background Attitudes* (Bates No: 502030644-0657). R.J. Reynolds Strategic Research Report entitled *Younger Adult Smokers: Strategies and Opportunities* (February 29, 1984). New Product Concepts (670186789-6824). New Product Concepts (670186789-6824). Memo from George A. Dean to J. A. Albanese, RJR, re: *Camel Menthol and the Negro Market* (November 9, 1967). Overview Analysis of Black Smokers (1984). KOOL Strategic Brand Plan (Bates No. 670624652-4705). Memorandum from G. T. Reid to F. E McKeown re: KOOL Marketing Analysis and Strategy Recommendations (April 26, 1978). Pollay et al. 1992: Pollay,

These advertising and marketing efforts violated the *Cigarette Advertising Code*,¹⁰⁹ which the Tobacco Industry voluntarily adopted in 1964. As Tobacco Industry representatives and executives have stated, the Cigarette Advertising Code was focused on making sure that the cigarette advertising and marketing practices were not appealing to youth.¹¹⁰ To this end, the Cigarette Advertising Code specifically provided that cigarette advertising shall not appear (i) on

Richard W., Jung S. Lee, and David Carter-Whitney (1992), Separate, But Not Equal: Racial Segmentation in Cigarette Advertising, *Journal of Advertising*, Vol. 21, No. 1 (March): 45-57. Pollay 1993: Pollay, Richard W. (1993), "Getting Good and Being Super Bad: Chapters in the Promotions of Cigarettes to Blacks," Working Paper Series, *History of Advertising Archives*. Surgeon General 1998: Surgeon General (1998), *Tobacco Use Among U. S. Racial/Ethnic Minority Groups - African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General*, Atlanta GA: U. S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office of Smoking and Health. Voorhees, et al. 1997: Voorhees, Carolyn C., Robert T. Swank, Frances A. Stillman, Donna X. Harris, Herbert W. Watson, Jr., and Diane M Becker (1997), "Cigarette Sales to African-American and White Minors in Low-Income Areas of Baltimore," *American Journal of Public Health*, Vol. 87, No. 4 (April): 652-654. *Effect of Menthol Cigarettes on Biochemical Markers of Smoker Exposure Among Black and White Smokers*, Pamela I. Clark, PhD; Chiva Gautam, PhD; and Lowell W. Gerson, PhD. (November 1996). "Sharing The Blame: Smoking Experimentation and Future Smoking - Attributable Mortality Due to Joe Camel and Marlboro Advertising and Promotions" by John P. Pierce, Elizabeth A. Gilpin, Won S. Choi (1999). Pierce et al. 1999: Pierce, John P. and Elizabeth A. Gilpin and Won S. Choi (1999), "Sharing the blame; smoking experimentation and future smoking-attributable mortality due to Joe Camel and Marlboro Advertising and promotions," *Tobacco Control*, Vol. 8: 37-44. Nelson et al. 1995: Nelson, D. E., G. A. Giovino, D. R. Shopland, P. D. Mowery, S. L. Mills, M. P. Erickson (1995), "Trends in cigarette smoking among U. S. adolescents, 1974 Through 1991," *American Journal of Public Health*, Vol. 85:34-40. Evans et al. 1995: Evans, Nicola, Arthur Farkas, Elizabeth Gilpin, Charles Berry and John P. Pierce (1995), "Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking," *Journal of the National Cancer Institute*, Vol. 87, No. 20, October 18: 1538-1545. "Trends in Adolescent Smoking Initiation in the United States: Is Tobacco Marketing An Influence?" by Elizabeth A. Gilpin, John P. Pierce (1997).

¹⁰⁹ Cigarette Advertising Code (April 27, 1964). Press Release from Hill & Knowlton entitled "Cigarette Manufacturers Announce Advertising Code" (April 27, 1964).

¹¹⁰ Deposition of James Morgan (Philip Morris), pp. 230-231; James W. Johnston (R.J. Reynolds), p. 199; 204; Eric Gesell (American Tobacco), p. 38.

television and radio programs, or in publications, directed primarily to persons under 21 years of age; ... (iii) in school, college, or university media (including athletic, theatrical and other programs; (iv) in comic books, or comic supplements to newspapers. In addition, the Tobacco Industry agreed not to sample cigarettes to persons under age 21 or use of models that appeared under age 25.¹¹¹

The Code also provided that "Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success or sexual attraction." Health claims, including implied health claims, were also prohibited by the Code, and would have violated the Tobacco Industry's 1954 promise to tell the truth about the health effects of cigarettes. Thus, the Code provided that:

Cigarette advertising may use attractive, healthy looking models, or illustrations or drawings of persons who appear to be attractive and healthy, provided that there is no suggestion that their attractive appearance or good health is due to cigarette smoking.

Cigarette advertising shall not depict as a smoker any person well known as being, or having been, an athlete.

Cigarette advertising shall not depict as a smoker any person participating in, or obviously having just participated in, physical activity requiring stamina or athletic conditioning beyond that of normal recreation.

As early as the 1970s, studies have shown that the code was not enforced, and the revised code in 1990 even dropped the enforcement provisions.¹¹² The Code, however, represents another promise voluntarily made and violated, and to understand the ways in which the Tobacco

¹¹¹ Perceived Age and Attractiveness of Models in Cigarette Advertisements, Mazis et al. (Journal of Marketing January 1992).

¹¹² Richards, Tye and Fischer 1996: Richards, John W., Joe B. Tye and Paul M. Fischer (1996), "The Tobacco industry's code of advertising in the United States: myth and Reality," *Tobacco Control*, Vol 5: 295-311.

Industry violated both the letter and spirit of the Code, it is necessary to understand basic marketing principles.

1. Principles of Segmentation and Target Market Selection.

Market segmentation and targeted marketing are common marketing practices, and in and of themselves they lead to marketing efficiencies. However, under certain circumstances, these tools of marketing may be misused. Rittenburg and Parthasarathy (1997) have reviewed the literature related to target marketing and have noted that marketers have been criticized when targeting disadvantaged or vulnerable segments of a society with potentially harmful products.

Market segmentation and targeted marketing refers to the classification of the total market into sub-groups that are homogeneous with respect to important aspects of buyer behavior as it relates to an offered product. There are four characteristics that are generally recognized in the marketing literature to define a desirable target market segment. The target market segment should be (1) identifiable, (2) large enough to be profitable, (3) reachable by advertising, promotion and distribution systems, and (4) have legal authority to buy the product. Efforts to market to people who are legally barred from purchasing a product would generally be considered a violation of marketing ethics in a stable society and might be a cause for a criminal action.

The objective of market segmentation is to identify segments for which a mix of product, promotion, distribution and pricing strategies may be developed that will be more effective in penetrating the market and more profitable for the seller than a single set of strategies that address the total market without differentiation. Penetration of the market refers to selling more products into the market to more customers by keeping current customers in the targeted market

and selling more products to them, and by recruiting new customers from the targeted market.

Targeted marketing involves developing such a marketing mix and presenting it effectively to the selected segment.

Effective segmentation requires extensive research, and is generally more expensive to implement than a "total market" approach since new products specific to the target market are often developed; and since promotion, pricing and distribution plans must be implemented separately for each selected segment. However, the effectiveness with which targeted segments can be deeply penetrated and the subsequent brand equity benefits of consumer loyalty often justify segmentation and targeted marketing strategies.

(a) Consumer Types.

Like all tools, segmentation and targeted marketing can be used in ways that exploit vulnerable populations. Rittenburg and Parthasarathy (1997)¹¹³ have reviewed the literature ethics and market segmentation to identify points of consensus among researchers. They propose an ethical framework for guiding marketers in target market selection that classifies potential target market segments into three groups:

- sophisticated consumer
- at risk consumers
- vulnerable consumers

Sophisticated consumers have strong cognitive abilities that guard against vulnerability to extensive marketing and advertising messages and sales approaches. Such abilities derive from

¹¹³ Rittenburg and Parthasarathy (1997): Rittenburg, Terri L. and Madhavan Parthasarathy (1997), "Ethical Implications of Target Market Selection," *Journal of Macromarketing*, Vol. 17, No. 2 (Fall), p. 49, 16 p.

strong educational backgrounds and broad social experiences, particularly in regard to business and purchase behavior.

At risk consumers have similar cognitive abilities, but may be prone to addictions or compulsive behavior. It has been observed¹¹⁴ that addictions have physical and social roots including being socioeconomically disadvantaged, less educated or having less access to consumer information. This may also involve a lack of formal education needed to assess critical scientific information, particularly in the context of extensive advertising and public relations campaigns designed to distract consumers from fundamental health risks or to provide potentially conflicting information to discredit formal scientific sources. - as in the case of the Tobacco Industry and its public relations arms¹¹⁵.

Vulnerable consumers are at even greater risk for similar reasons. Vulnerable consumers might not adequately understand the implications of marketing messages. Vulnerable consumers might also be persons at greater risk of physical harm due to health factors that may be biologically, psychologically or social environment based, or who - as indicated by the previous discussion of deception in advertising - do not have the sophisticated market related education and experiences needed to understand fully the marketing messages, and distinguish between accurate, critically relevant information versus distractions, mis-information and false promises.

(b) Product Categories.

¹¹⁴ Hirschman, Elizabeth C. (1992). "The Consciousness of Addiction: Toward A General Theory of Compulsive C consumption." *Journal of Consumer Research*, 19 (September): 155-79.

¹¹⁵ Burklow (1998): Burklow, John (1998), "Journal Letters Financed by the Tobacco Industry," *Journal of the National Cancer Institute*, Vol. 90, No. 17 (September 2), P. 1259, 1p.

Rittenburg and Parthasarathy also developed four product categories. These are: (1) Socially beneficial products; (2) Products providing benefits to target markets but not necessarily providing benefits to the larger society; (3) Products harmful due to abuse but which would be safe when used properly; and (4) Products that are inherently dangerous even when used as the manufacturer intended.

By crossing target market categories and product categories, Rittenburg and Parthasarathy have developed a twelve-cell matrix to help guide ethical decision making regarding segmentation and targeted marketing. Within this matrix, tobacco products such as cigarettes would be in product category four, - inherently dangerous products even when used as the manufacturer intended, and potential target markets such as youth, African Americans, blue collar workers and women would be appropriately classified as at-risk and vulnerable consumers due to lower educational attainments, biological factors, environmental health risks, and socioeconomic disadvantages which may even effect adequate health care.

(c) Responsibilities of Sellers to Targeted Consumers.¹¹⁶

Laczniak and Murphy (1993)¹¹⁶ recognize the marketing standard by which sellers have the responsibility to have knowledge of dangerous consequences of their products to buyers, and to inform potential users of potential risks. The Rittenburg and Parthasarathy paradigm gives special emphasis to these responsibilities in the context of at-risk and vulnerable populations when potentially harmful products are involved.

¹¹⁶ Laczniak and Murphy (1993): Laczniak, Gene R. (1993), "Marketing Ethics: Onward toward Greater Expectations," *Journal of Public Policy and Marketing*, Vol. 12, No. 1 (Spring), P. 91, 6p.

It is from these perspectives of market segmentation, targeted marketing, vulnerable populations and products with potentially dangerous consequences that we consider Tobacco Industry efforts to profit from targeting youth, African Americans, blue collar workers and women.

2. Youth.

The controversy over Tobacco Industry advertising to persons under age 18 has continued since at least 1935 when William Randolph Hearst criticized the Tobacco Industry for advertising on the comic strip pages of his companies' newspapers.¹¹⁷ Nonetheless, the Tobacco Industry has repeatedly claimed that it did not market or advertise to youth. For example, on November 20, 1962, in an attempt to discredit a statement by Leroy Collins, President of the National Association of Broadcasters that cigarette advertising is designed to influence high school age children, George Allen, President of The Tobacco Institute stated:

The tobacco industry regards smoking as an adult custom, and the decision to smoke or not to smoke should be made at the age of mature judgement.

Mr. Collins' statement about smoking applies a judgement of finality to questions of medical science that are complex and that are under study and debate by scientists throughout the world.¹¹⁸

¹¹⁷ Letter to William Randolph Hearst, Esq. re: Use of Comic Sections (September 10, 1935).

¹¹⁸ Tobacco Institute Press Release "Tobacco Institute Head Calls N.A.B. President's Charges Incorrect" (November 20, 1962).

A June 19, 1963 Hill and Knowlton memo quotes the following statement issued by George V. Allen, President of the Tobacco Institute: "[t]he tobacco industry's position has always been that smoking is an adult custom."¹¹⁹

As stated above, in 1964 the Tobacco Industry expressly promised not to market to youth defined and those under the age of 21 - through passage of the Cigarette Advertising Code.

Since then, the Tobacco Industry has repeatedly denied that it markets to youth. For instance, in 1979, Liggett President R. J. Mulligan wrote to the Secretary of Health, Education and Welfare.¹²⁰

... this company does not promote or advertise its cigarette products to children or young people under twenty-one years of age, nor are our promotional advertising aimed at encouraging such children and young people to begin smoking or even continue smoking.

In 1979 Brown and Williamson Chairman C. I. McCarty wrote to the Secretary of Health and Welfare.¹²¹

We maintain a strict policy against promoting cigarettes to persons under 21 years of age.

On January 1984, RJR issued a statement regarding RJR's positions on cigarettes. Mr. Horrigan is quoted as saying:

The question of smoking by youth is an excellent example of the need to communicate our position,' he said. 'Some anti-smoking activists have attempted

¹¹⁹ Hill and Knowlton Informational Memorandum for Members re: *Statement on College Advertising and Promotion* (June, 19, 1963).

¹²⁰ Letter from Raymond J. Mulligan, President of Liggett Group, to Joseph A. Califano, Secretary of Health, Education and Welfare Re: Advertising to Youth (May 18, 1979).

¹²¹ Letter from C. I. McCarty, Chairman of Brown & Williamson Tobacco Company, to Joseph Califano, Secretary of Department of Health, Education and Welfare Re: Advertising to Youth (June 1, 1979).

to make the public believe R. J. Reynolds Tobacco Company encourages smoking by young people. The truth is that our long-standing position has been that smoking is an adult custom, and we do not believe young people should smoke.¹²²

In 1989 the Tobacco Institute published the booklet *Smoking and Young People - Where the Tobacco Industry Stands* in which it states in the fourth paragraph:

The tobacco industry does not want young people to smoke. That is why the Tobacco Industry is committed to a program of advertising and promotion practices designed to ensure that smoking remains an adult custom.¹²³

A 1991 edition of the same book states:

[S]ince the early 1960's, the Tobacco Industry has taken strict measures to limit children's exposure to tobacco products. Cigarette manufacturers do not advertise in publications directed primarily to young people, they do not use models in ads who are, or appear to be, under 25 years of age.¹²⁴

Thus, the Tobacco Industry has frequently claimed that its advertising and public relations efforts are directed to current smokers, not to the recruitment of new smokers or youth.¹²⁵

However, the attention that the Tobacco Industry paid to the potential and realized market of youth under age 18, and the young adult market between age 18 and 25 as sources of new smokers belies this claim.¹²⁶ Moreover, analyses by the Centers for Disease Control of the

¹²² R.J. Reynolds Tobacco Company Press Release on the company's point of view on subjects as passive smoking, youth smoking, smoking courtesy and smoking and health (January 30, 1984).

¹²³ Tobacco Institute Report: "*Smoking and Young People- Where The Tobacco Industry Stands*" (2025861325-1334).

¹²⁴ Tobacco Institute Report: "*Smoking and Young People- Where The Tobacco Industry Stands*" (TIMN 0133916-3922).

¹²⁵ Hill and Knowlton Informational Memorandum for Members re: *Statement on College Advertising and Promotion* (June, 19, 1963).

¹²⁶ *Seventh Graders' Self-Reported Exposure to Cigarette Marketing and Its Relationship to Their Smoking Behavior* by Caroline Schooler, PhD, Ellen Feighery, MS, and

financials of cigarette advertising and the monetary returns of attracting switchers in light of actual switching behavior based on the 1986 Adult Use of Tobacco Survey¹²⁷ also disproves their point.

In truth, the companies in the Tobacco Industry developed and carried out marketing programs aimed directly at youth, and these campaigns were successful. As studies have shown, the Tobacco Industry's marketing had the effect of inducing children and teenagers to become smokers.¹²⁸ Any doubt is alleviated by the company documents.

June A. Flora, PhD (American Journal of Public Health, September 1996). Original Contributions: *Tobacco Industry Promotion of Cigarettes and Adolescent Smoking* (Pierce et al) (JAMA February 18, 1998). Adolescent Exposure to Cigarette Advertising in Magazines: *An Evaluation of Brand-Specific Advertising in Relation to Youth Readership* (JAMA February 18, 1998). Brown & Williamson Tobacco Company New Ventures Project -Consumer Views: *The "New" Smoker* (September 1974). Memorandum from G. T. Reid to F. E. McKeown re: KOOL Marketing Analysis and Strategy Recommendations (April 26, 1978).

¹²⁷ Spiegel, Michael, David E. Nelson, John P. Peddicord, Robert K. Merritt, Gary Giovino and Michael P. Ericksen (1996), "The extent of cigarette brand and company switching: Results of the Adult Use of Tobacco Survey," *American Journal of Preventive Medicine*, Vol. 12, No. 1: 14-16.

¹²⁸ 1994 Surgeon General Report: *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*. Atlanta, Georgia: U. S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1994.

Tobacco Industry documents reveal beliefs extending over several decades¹²⁹ that the future profitability of the Tobacco Industry required new smokers - referred to as "starters" - from among teenagers. The Tobacco Industry recognized that unless a person began smoking as a teenager, he or she likely would not become a smoker in the future¹³⁰ and even if recruited in later years, would not be as valuable to the company.¹³¹ The Surgeon General's 1994 report on Youth Smoking reported that "nearly all first use of tobacco occurs before high school graduation." In addition, the Tobacco Industry recognized that initial brand choice of teenagers would be a profitable competitive advantage for the Brand in the future.¹³² Thus, the Tobacco Industry recruited smokers at the youngest age possible.¹³³ The 1984 RJR report *Younger Adult Smokers: Strategies and Opportunities*¹³⁴ illustrates these concerns:

¹²⁹ Phillip Morris Report by Myron E. Johnston entitled "Young Smokers: Prevalence, Trends, Implications, and related Demographic Trends" (March 31, 1981). R.J. Reynolds Strategic Research Report entitled *Younger Adult Smokers: Strategies and Opportunities* (February 29, 1984). R.J. Reynolds Strategic Research Report by Diane S. Burrows: *Younger Adult Smokers: Strategies and Opportunities*, "appended to text of July 7, 1996 AP story by Amy Kuebelbeck: *The Importance of Targeting the Youth Market*" {RJR Report admitted under MN Trial #12,579} (00685-00789). Research Planning Memorandum: DRAFT "Some Thoughts About New Brands of Cigarettes For The Youth Market" (February 2, 1973).

¹³⁰ Document entitled "Incidence of Initiation of Cigarette Smoking -United States, 1965-1996 (October 8, 1998). Letter re: Strategies and Segments (April 13, 1984).

¹³¹ R.J. Reynolds Strategic Research Report by Diane S. Burrows "*Younger Adult Smokers: Strategies and Opportunities*" (February 29, 1984).

¹³² Letter re: Strategies and Segments (April 13, 1984).

¹³³ Letter re: Strategies and Segments (April 13, 1984). 20/20 Telecast- *Growing Up In Smoke* (October 20, 1983).

¹³⁴ R.J. Reynolds Strategic Research Report by Diane S. Burrows: "*Younger Adult Smokers: Strategies and Opportunities*," appended to text of July 7, 1996 AP story by Amy Kuebelbeck: *The Importance of Targeting the Youth Market*" {RJR Report admitted under MN

Younger adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years. They will continue to be just as important to brands/companies in the future for two simple reasons:

- The renewal of the market stems almost entirely from 18-year-old smokers. No more than 5% of smokers start after age 24.
- The brand loyalty of 18-year-old smokers far outweighs any tendency to switch with age

These points are well made by Myron Johnston in his 1981 "Summary" for Philip Morris of the study *Young Smokers - Prevalence, Trends, Implications, and Related Demographic Trends*.¹³⁵ Johnston writes:

It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teenage years.

He continues in the next paragraph

...Furthermore, it is during the teenage years that the initial brand choice is made. At least part of the success of Marlboro Red during its most rapid growth period was because it became the brand of choice among teenagers who then stuck with it as they grew older... this combined with the rapid growth in the absolute number of teenagers. Between 1967 and 1976 the number of 15-19 year-olds in the U.S. increased 18 percent, and there was also an increase during at least part of that period in the percent of teenagers who smoked cigarettes.

Another illustration is provided in Al Udow's 1976 Philip Morris memo "Why people start to smoke" which summarizes a variety of government and private scientific sources

Trial #12,579} (00685-00789).

¹³⁵ Phillip Morris Report by Myron E. Johnston entitled "Young Smokers: Prevalence, Trends, Implications, and related Demographic Trends" (March 31, 1981).

regarding the reasons people start smoking, particularly school age youth.¹³⁶ He notes the need to learn more about smoking and reports the importance of parents as smokers, curiosity, conformity pressures among adolescents including peer-group satisfaction, need for self assurance, and striving for adult status. Summarizing Joseph D. Matarazzo's (University of Oregon Medical School) writing in the International Encyclopedia of the Social Sciences and a variety of academic and government sources, Udow effectively used information produced by government and scientific bodies to contribute to programs for inducing under age youth to become new starters.

The importance of marketing to youth are illustrated in a draft of a memo by Charles E. Teague, Jr. of RJR¹³⁷ in 1973 entitled *Research Planning Memorandum on Some Thought About New Brands of Cigarettes for the Youth Market* which states:

Realistically, if our company is to survive and prosper, over the long term, we must get our share of the youth market.

In that same memo Teague identifies psychological effects which "... also largely determine which brand the pre-smoker will experiment and learn with." He then identifies these effects as "group identification," "stress and boredom relief," "self-image enhancement," "experimentation," and "anti-establishment attitudes," and points out that:

Today more than ever, young people tend to reject whatever is accepted by the "over-thirty" establishment, which includes their parents.

¹³⁶ Phillip Morris Inter-Office Correspondence from Al Udow re: *Why People Start To Smoke* (July 2, 1976).

¹³⁷ Charles E. Teague, Jr., *Research Planning Memorandum on Some Thought About New Brands of Cigarettes for the Youth Market*; 1973.

Similar points are made in a plan for a new advertising campaign for Salem cigarettes by P. R. Ray in 1975 while reviewing statistical data on smokers age 14 to 17:

...[M]ost people start smoking in their teens. Perhaps the best way to address this question is to look at category/brand shares of 14-17 year olds as a means of assessing the relative contributions of truly new smokers...¹³⁸

Also, consider the following statements from the conclusions of a research study¹³⁹ by

Brown and Williamson Tobacco Corporations in the early 1970s:

Kool has shown little or no growth in share of users in the 26+ age group. Growth is from 16-25 year olds. At the present rate, a smoker in the 16-25 year age group will soon be three times as important to KOOL as a prospect in any other broad age category.

An undated "Viceroy Marketing Strategy" Document¹⁴⁰ states:

The Corporation's stated goal is to become, within ten years, the fastest/growing tobacco company in the U.S. ... Thus its brands must attract and retain competitive smokers and new smokers disproportionately greater than competing brands.

A 1976 Viceroy marketing strategy memorandum echoes this theme:

The target audience of a new campaign should include starters, young competitive full-taste smokers, and older full-taste smokers who have tried Viceroy in the past.¹⁴¹

¹³⁸ Memo re: New Advertising Campaign -Salem (May 1, 1975).

¹³⁹ B&W Memo discussing "Conclusions based on Wave XIII and the latest Black Study," re: Kool Marketing Efforts (February 21, 1973).

¹⁴⁰ Viceroy- Marketing Strategy (Bates No. B&W 680113760-3763).

¹⁴¹ Memorandum from E. A. Willets, III to G. T. Reid re: "*Viceroy Advertising Objectives and Creative Strategies 1936-1975*" (July 19, 1976)

Similarly, Kool marketing documents from the 1970 and 1980s express recruitment of starters as a key concern for the Kool brand.¹⁴² A Ted Bates Advertising document states: "Kool's effort is successfully attracting new smokers."¹⁴³ A 1979 Brown and Williamson market planning document entitled "Kool Family Utopian Objectives 1979-1985 and included under the heading "Obstacles to Overcome": "Kool must achieve a user image that is acceptable to the majority of young adult and starter smokers."¹⁴⁴

Given the importance of recruiting new smokers and the long term financial benefit of recruiting young smokers, it is not surprising that for over 30 years the Tobacco Industry has monitored the number of young smokers - including smokers under age 18 and often age 14 or younger - and their smoking habits¹⁴⁵ and their reasons for starting.¹⁴⁶

¹⁴² KOOL Commercial History- TV (10/27/80). Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975). B&W Internal Correspondence re: Young Black Smokers (6/26/84). Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975).

¹⁴³ Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975).

¹⁴⁴ Kool Family Utopian Objectives (1979-1985).

¹⁴⁵ A Phillip Morris Report by The Roper Organization entitled "A Study of Smoking Habits Among Young Smokers" (July 1974). What Have We Learned From People? -A Conceptual Summarization of 18 Focus Group Interviews on the Subject of Smoking (May 26, 1975). Phillip Morris Analysis: "Malboro," re: advertising and market share data (March 29, 1979). Phillip Morris Report by Myron E. Johnston entitled "Young Smokers: Prevalence, Trends, Implications, and related Demographic Trends" (March 31, 1981). Letter re: Company Shares Broken By Age Groups (September 21, 1972). Phillip Morris Inter-Office Memorandum re: Incidence of Smoking Cigarettes (May 18, 1973). Letter from R.J. Reynolds Marketing Research Department to Paula Drillman re: (1) Profiles of Smokers Ages 14-20; (2) Our 1973 Negro Market Audits; and (3) a table showing the types of smokers who by Salem or Kool in addition to their usual brand (December 5, 1973). Smoking Initiation by Adolescent Girls, 1944-1988: An Association With Targeted Advertising (JAMA February 23, 1994). Letter re: Company Shares Broken By Age Groups (September 21, 1972). Letter re: Company Shares Broken By Age

Based on extensive research into the psychology, social needs and motivations of youth¹⁴⁷ as early as the 1960s and continuing into the 1990s, the Tobacco Industry developed and implemented advertising strategies directed at youth.¹⁴⁸ These marketing campaigns are also well documented in the Surgeon General's 1994 report and have included advertising, events and promotional products and have been clearly visible, attractive and memorable to youth. Moreover, such programs, include advertising in high teenage readership magazines is reported

Groups (September 21, 1972). Research Planning Memorandum: DRAFT "Some Thoughts About New Brands of Cigarettes For The Youth Market" (February 2, 1973). The Roper Organization Report: *A Study of Smoking Habits Among Young Smokers* (July 1974). The Roper Organization Report: *A Study of Smoking Habits Among Young Smokers* (July 1974). 1975 Marketing Plans Presentation- Hilton Head (September 30, 1974). Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975). R.J. Reynolds Product Research Report: Share of Smokers By Age Group (October 30, 1975). Letter re: Product Information (August 30, 1978). Phillip Morris Report by Myron Johnston entitled *Young Smokers- Prevalence, Trends, Implications, and Related Demographic Trends*" (March 11, 1981). Phillip Morris Inter-Office Memorandum re: The Decline in the Rate of Growth of Marlboro Red (May 21, 1975). R.J. Reynolds Inter-Office Memorandum re: MDD Report on Teenage Smokers (14-17) (July 22, 1980). Preliminary Study Report on Raleigh Cigarettes (May 20, 1948).

¹⁴⁶ Phillip Morris Inter-Office Correspondence from Al Udow re: *Why People Start To Smoke* (July 2, 1976). Brown & Williamson Tobacco Company New Ventures Project - Consumer Views: *The "New" Smoker* (September 1974).

¹⁴⁷ *Contemporary Consumer Attitudes Toward Cigarettes, Smoking, and Health: A Motivation Research Study of Developing Trends in Receptivity and Resistance* (August 1969). *What Have We Learned From People? - A Conceptual Summarization of 18 Focus Group Interviews on the Subject of Smoking* (May 26, 1975). The Roper Organization Report: *A Study of Smoking Habits Among Young Smokers* (July 1974).

¹⁴⁸ *Smoking Initiation by Adolescent Girls, 1944-1988: An Association With Targeted Advertising* (JAMA February 23, 1994). Research Planning Memorandum: DRAFT "Some Thoughts About New Brands of Cigarettes For The Youth Market" (February 2, 1973). Phillip Morris Inter-Office Memorandum re: Incidence of Smoking Cigarettes (May 18, 1973). 1975 Marketing Plans Presentation- Hilton Head (September 30, 1974). Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975). R.J. Reynolds Letter re: "Meet the Turk Ad Campaign" (January 23, 1975). Letter re: Product Information (August 30, 1978).

to be continuing. A recent study by the Massachusetts's Department of Public Health¹⁴⁹ documents increased expenditures between 1998 and 1999 by the major tobacco companies on ads in magazines with over 15% teenage readership.

Again, the Tobacco Industry documents tell the story. A 1974 RJR Marketing Plans Presentation written by C.A. Tucker, R.J. Reynolds vice president of marketing at the time and presented to the Board of Directors focused on the importance of the young adult market, which was defined to include underage smokers.¹⁵⁰ As the document states:

... this young adult market, the 14-24 age group, represented 21% of the population.

... they will represent 27% of the population in 1975. They represent tomorrow's cigarette business. As this 14-24 group matures, they will account for a key share of the total cigarette volume -- for at least the next 25 years."

The presentation then notes "comparative weakness" of RJR's brands in the youth market relative to Philip Morris and Brown and Williamson brands, and then develops strategies to strengthen RJR brands through campaigns specifically designed for "young adults", including increased advertising insertions in traditional young adult magazines like Sports Illustrated, Playboy and MS, and sponsorship of "major special events" including NASCAR races. These sponsorships involved extensive permanent billboards, brand exclusivity at promotion sites, branded promotion clothing items, banners and pastings with strong brand identification, brand commercials over public address systems, retail store tie-ins, and newspaper and program advertising "for image association between the brand and the sport."

¹⁴⁹ Turner-Bowker & Hamilton, Cigarette Advertising Expenditures Before and After the Master Settlement; Preliminary Findings, May 15, 2000.

¹⁵⁰ 1975 Marketing Plans Presentation- Hilton Head (September 30, 1974).

The same planning presentation notes the use of, sampling couponing, merchandise and in store displays at stores frequented by "young adults". The presentation then notes that a key opportunity for growth is the "increase our young adult franchise" and that RJR had a 27% share of age 14-24 smokers as compared to 38% for Philip Morris and 21% for Brown & Williamson.

In a 1975 memo¹⁵¹ from RJR's J. F. Hind to C. A. Tucker, Hind writes

Our attached recommendation to expand nationally the successfully tested "Meet the Turk" ad campaign and new Marlboro-type blend is another step to meet our marketing objectives to increase our young adult franchise. To ensure increased and longer term growth for CAMEL FILTER, the brand must increase its share penetration among the 14-24 age group ..."

A 1975 RJR "secret" recommendation, after stating that "the brand must increase its share penetration among the 14 to 24 age group" urges RJR marketing personnel:

While [this campaign] is designed to shift the brand's age profile to the younger age group, this won't come overnight. Patience, persistence, and consistency will be needed.¹⁵²

From a RJR July 1980 memo:¹⁵³

Last January, a report was issued on this subject that indicated that Philip Morris had a total share 59 among 14-17 year old smokers, and specifically, Marlboro had a 52 share. This latest report indicates that Philip Morris' corporate share has increased by about 4 points; however, Marlboro remains the same at 52.

Importantly, the report further indicates that RJR continues to gradually decline, and between the spring and fall 1979 periods, RJR's total share declined from 21.3 to 19.9.

¹⁵¹ Letter to J. F. Hind from C. A. Tucker attaching recommendation to expand nationally the successfully tested "Meet the Turk" ad campaign and new Marlboro-type blend.....to increase young adult franchise (January 23, 1975).

¹⁵² R.J. Reynolds Letter re: "Meet the Turk Ad Campaign"(January 23, 1975).

¹⁵³ R.J. Reynolds Inter-Office Memorandum re: MDD Report on Teenage Smokers (14-17) (July 22, 1980).

Hopefully, our various planned activities that will be implemented this fall will aid in some way in reducing or correcting these trends."

Explicit media attention to the children's market was not limited to RJR. In 1973¹⁵⁴

Brown and Williamson's R. A. Pittman summarized the conclusions of the Wave XIII study and the "latest Black Study" on which "we plan to take action."

Kool's stake in the 16 - 25 year old population segment is such that the value of this audience should be accurately weighted and reflected in current media programs. As a result, all magazines will be reviewed to see how efficiently they reach this group and other groups as well.

Lorillard also recognized the need to explicitly develop marketing programs and products for the youth market.¹⁵⁵

The success of NEWPORT has been fantastic during the past few years. Our profile taken locally shows this brand being purchased by black people (all ages), young adult (usually college age), but the base of our business is the high school student.

NEWPORT in the 1970's is turning into the Marlboro of the 60's and 70's. It is the "In" brand to smoke if you want to be one of the group.

Our problem is the younger consumer that does not desire a menthol cigarette....

I think the time is right to develop a NEWPORT NATURAL (non-menthol) cigarette to attract the young adult consumer desiring a non-menthol product. We have a solid base with NEWPORT and I foresee much success with the name of NEWPORT on new packaging.

Philip Morris was also active in the high school student market. In 1971, Myron Johnston of Philip Morris wrote:

It was my contention that Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among younger smokers

¹⁵⁴ B&W Memo discussing "Conclusions based on Wave XIII and the latest Black Study," re: Kool Marketing Efforts (February 21, 1973).

¹⁵⁵ Letter re: Product Information (August 30, 1978).

and the rapid growth in that population segment. I pointed out that the number of 15-19 year olds is now increasing more slowly and will peak in 1976, and the begin to decline.¹⁵⁶

Drawing on survey data from the Survey Research Center of the University of Michigan and from the Cooperative Institutional Research Program of the University of California at Los Angeles - which Mr. Johnston described as excellent sources - Phillip Morris was able to carefully track trends in smoking by high school students from 1966 to 1980 and the relationship of smoking behavior to educational attainment and aspirations and race. Based on these data, the report concludes:

Because we have our highest share index among the youngest smokers, we will suffer more than other companies from the decline in the number of teenage smokers. ... We have a high share of smokers under age 30, and, although they will begin to decline in number, the increased average daily consumption of smokers in their 20's will, other things being equal, result in increased unit sales to those younger age cohorts even after total Tobacco Industry sales begin to decline. To the extent to which we can hold on to our present smokers, or catch them with another of our brands when they switch, we are the least vulnerable of the companies to these population trends. Of our brands, B&H appears most vulnerable.¹⁵⁷

These marketing programs have had the documented effect of increasing brand awareness and brand preference among youth and serving as an inducement to youth to start smoking, thus increasing the likelihood that youth under age 18 will try smoking.¹⁵⁸ This conclusion is

¹⁵⁶ Memorandum to Dr. R. B. Sellman from Myron Johnston, Subject: *The Decline in the Rate of Growth of Marlboro Red* (May 21, 1975).

¹⁵⁷ *Young Smokers Prevalence, Trends, Implications, and related Demographic Trends*, by Myron E. Johnston, Phillip Morris U.S.A. Research Center (March 31, 1981).

¹⁵⁸ "Is the Smoking Decision An 'Informed Choice'? -Effect of Smoking Risk Factors on Smoking Beliefs" (JAMA, June 26, 1987). Perceived Age and Attractiveness of Models in Cigarette Advertisements, Mazis et al. (Journal of Marketing 1/92). "Changes in the Cigarette Brand Preferences of Adolescent Smokers"- United States, 1989-1993 (Science Periodical, August 19, 1994). "Incidence of Initiation of Cigarette Smoking -United States, 1965-1996

supported by numerous studies including a 1994 Report which found that the three most heavily advertised brands were the three leading brands among adolescents.¹⁵⁹ Other studies supporting this conclusion include Cummings et al. 1997,¹⁶⁰ Gilpin and Pierce 1997,¹⁶¹ Arnett and Terhanian 1998,¹⁶² Pierce, et al. 1999,¹⁶³ Pucci and Siegel 1999,¹⁶⁴ Redmond 1999, King et al. 1998).¹⁶⁵

These marketing effects have been further documented in the *American Journal of Public Health*,¹⁶⁶ *The Journal of the American Medical Association*,¹⁶⁷ *The Journal of the National*

(October 8, 1998). The American Tobacco Company Memorandum from F. X. Whelan to A.R. Stevens and A.C. Garrett re: Television Advertising (September 25, 1957). 1975 Marketing Plans Presentation- Hilton Head (September 30, 1974). Research Report "Reinforcing Effects of Cigarette Advertising on Under-Age Smoking" by P.P. Aitken & D.R. Eadie (British Journal of Addiction, 1990).

¹⁵⁹ *Changes in the Cigarette Preferences of Adolescent Smokers 1989-1993* (U. S. Dept. of Health and Human Services, 1994).

¹⁶⁰ Cummings, K. Michael, Andrew Hyland, Eugene Lewitt and Don Shopland (1997), "Discrepancies in cigarette brand sales and adult market share: Are new teen smokers filling the gap?" *Tobacco Control*, 6 (Supplement 2): S38-S43.

¹⁶¹ Gilpin, Elizabeth A. and John P. Pierce (1997), "Trends in adolescent smoking initiation in the United States: Is tobacco marketing an influence?" *Tobacco Control*, 6: '22-'27.

¹⁶² Arnett, Jefferey Jensen and George Terhanian (1998), "Adolescents' responses to cigarette advertisements: links between exposure, liking, and the appeal of smoking," *Tobacco Control*, Vol. 7: 129-133.

¹⁶³ Pierce, John P. and Elizabeth A. Gilpin and Won S. Choi (1999), "Sharing the blame: smoking experimentation and future smoking-attributable mortality due to Joe Camel and Marlboro Advertising and promotions," *Tobacco Control*, Vol. 8: 37-44.

¹⁶⁴ Pucci, Linda G. and Michael Siegel (1999), "Features of sales promotions in cigarette magazine advertisements, 1980-1993: an analysis of youth exposure in the United States," *Tobacco Control*, Vol. 8: 29-36.

¹⁶⁵ Redmond, William (1999), "Effects of Sales Promotion on Smoking among U.S. Ninth Graders," *Preventive Medicine*, Vol. 28: 243-250.

¹⁶⁶ *Seventh Graders' Self-Reported Exposure to Cigarette Marketing and Its Relationship to Their Smoking Behavior* by Caroline Schooler, PhD, Ellen Feighery, MS, and

Cancer Institute, (Evans et al. 1995)¹⁶⁸ by the U. S. Department of Health and Human Sources (Morbidity and Mortality Weekly Report),¹⁶⁹ and *Health Education Quarterly* (Albright et al., 1988).¹⁷⁰ It is estimated by the Centers for Disease Control that as late as 1996, approximately 1,226,000 persons under the age of 18 become new daily smokers each year and that in 1995 approximately 2,441,000 persons under age 18 first smoked a cigarette - approximately 74.8 percent of all persons who first tried a cigarette in 1995.¹⁷¹

The Tobacco Industry's success is also apparent from its own documents:

A 1979 Philip Morris report states:

Marlboro dominates in the 17 and younger age category, capturing over 50% of this market.¹⁷²

June A. Flora, PhD (American Journal of Public Health, September 1996).

¹⁶⁷ *Smoking Initiation by Adolescent Girls, 1944-1988: An Association With Targeted Advertising* (JAMA February 23, 1994). Original Contributions: *Tobacco Industry Promotion of Cigarettes and Adolescent Smoking* (Pierce et al) (JAMA February 18, 1998). *Adolescent Exposure to Cigarette Advertising in Magazines: An Evaluation of Brand-Specific Advertising in Relation to Youth Readership* (JAMA February 18, 1998).

¹⁶⁸ *"Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking"* (JNCI, October 18, 1995).

¹⁶⁹ *"Changes in the Cigarette Brand Preferences of Adolescent Smokers" - United States, 1989-1993* (Science Periodical, August 19, 1994). Document entitled "Incidence of Initiation of Cigarette Smoking -United States, 1965-1996 (October 8, 1998).

¹⁷⁰ Albright, Cheryl A., David G. Altman, Michael D. Slater, Nathan Maccoby (1988), "Cigarette Advertisements in Magazines: Evidence for a Differential Focus on Women's and Youth Magazines." *Health Education Quarterly*, Vol. 15, No. 2: 225-233.

¹⁷¹ "Incidence of Initiation of Cigarette Smoking -United States, 1965-1996 (October 8, 1998).

¹⁷² Phillip Morris Analysis: "Marlboro," Re: advertising and market share data (March 29, 1979).

A 1978 Lorillard memorandum to the president of the company casually points out company's success in its youth targeting efforts:

Our profile taken locally shows this brand being purchased by black people . . . , but the base of our business is the high school student.¹⁷³

A 1975 memorandum from Ted Bates Advertising to Brown & Williamson states:

Kool's effort against the 16 to 25 age group continues to be working...Kool's effort is successfully attracting new smokers.¹⁷⁴

As a result of these efforts, the Tobacco Industry increased the number of people who started smoking, in direct violation of their repeated assurances that they would not and did not market toward youth.

African Americans

Pollay¹⁷⁵ has documented the increase in advertisements in Black oriented magazines and the increasing use of Black athletes and models during the period 1955 to 1965. He also documented the use of status imagery to appeal to African Americans, and such out-of-home advertising as billboards, posters, taxi tops, subways, and bus stops as advertising media particularly suited to reaching the Black population. He concluded that cigarette advertising is so pervasive as to reach as much as 95 to 98 percent of the population. This was recognized in 1975 in regard to Kool cigarette marketing to Blacks.

¹⁷³ Letter re: Product Information (August 30, 1978).

¹⁷⁴ Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975).

¹⁷⁵ Pollay, Richard W., Jung S. Lee, and David Carter-Whitney (1992), Separate, But Not Equal: Racial Segmentation in Cigarette Advertising, *Journal of Advertising*, Vol. 21, No. 1 (March): 45-57. Pollay, Richard W. (1993), "Getting Good and Being Super Bad: Chapters in the Promotions of Cigarettes to Blacks," Working Paper Series, *History of Advertising Archives*.

Kool now uses virtually all known vehicles that reach Blacks effectively and efficiently. Despite the low CPM with Blacks it is recommended that we add only interior transit in 12 new markets. The annual costs would be \$160,716. With this additional transit effort, KOOL will cover the top 25 markets in terms of absolute numbers of Negroes.¹⁷⁶

Status appeals and imagery targeting African Americans is also seen in the RJR study *U.S. Cigarette Market in the 1990's*¹⁷⁷ (B16T4) in which a predominately Black psychographic "mindset" segment is identified and labeled "A Cut Above / Status."

A. Size: Unknown but estimate that majority of Black smokers fall in this mindset based on agreement to dimensions and expert opinion.

B. Trend: Growing due to:
Benefit of re-emptive loyalty
Group mentality of black smokers

C. Brands	Index
B&W	251
Kool	477
Newport	394
Salem	145"

The importance of the Black community to RJR in the 1990's is also noted in this report.

Blacks and Hispanics will gain importance in the cigarette market, as in the total population. This growth will be most evident in the younger portion of the market, where preemptive loyalty is available.

¹⁷⁶ B&W Memo discussing "Conclusions based on Wave XIII and the latest Black Study," re: Kool Marketing Efforts (February 21, 1973).

¹⁷⁷ "U.S. Cigarette Market in the 1990's" (June 21, 1990).

Altman, Schooler and Basil (1991)¹⁷⁸ have shown the patterns and influence of billboard advertisements in the 1980s in San Francisco. They have documented that predominately Black neighborhoods zoned as neighborhood commercial districts (NCDs) had significantly greater likelihood of having billboards advertising menthol cigarettes (a category in which African American smokers are over-represented), and had a ratio of billboard cigarette ads per 1000 population that was twice as high as White NCDs. Extending the same study, Schooler, Basil and Altman (1996)¹⁷⁹ documented that the ethnicity of models in billboard cigarette ads tended to match the ethnicity the neighborhood. This has also been reported in regard to studies of magazine ads by Pollay (Pollay et al. 1992) and Basil (Basil et al. 1991)¹⁸⁰. These researchers also noted that in the number of cigarette ads in Black and youth oriented magazines began a dramatic increase in the 1980s and that since then the number of ads in Black and youth oriented magazines has remained constant despite ad declines in general readership magazines.

¹⁷⁸ Altman, D. G., C. Schooler and M. D. Basil (1991), "Alcohol and cigarette advertising on billboards," *Health Education Research*, Vol. 6, No. 4: 487-490.

¹⁷⁹ Schooler, Caroline, Michael Basil, David G. Altman (1996), "Alcohol and Cigarette Advertising on Billboards: Targeting With Social Cues," *Health Communication*, Vol. 8, No. 2: 109-129.

¹⁸⁰ Basil, Michael D., Caroline Schooler, David G. Altman, Michael Slater, Cheryl L. Albright, Nathan Maccoby (1991), "How Cigarettes are Advertised in Magazines: Special Messages for Special Markets," *Health Communication*, Vol. 3, No. 2: 75-91.

Moreover, the Tobacco Industry addressed, tracked and capitalized upon the high rates of Menthol cigarette smoking among African Americans.¹⁸¹ Some estimates of menthol cigarette smoking reach as high as 89% of "lower income" Black smokers.¹⁸²

Such programs have been successful, particularly with respect to African American males.¹⁸³

a. Vulnerability

The vulnerability of this population is documented by the 1998 Surgeon General's Report on "Tobacco Use Among the U.S. Racial/Ethnic Minority Groups," in regard to diseases related to smoking. Other research documents the vulnerability of this population in regard to such socioeconomic factors as education, occupation and health.¹⁸⁴

b. Segmentation and Targeting of African Americans

¹⁸¹ Cigarette Attitude Study Among Lower Income Blacks: Awareness, Attitudes, Usage (Section II) (March 1979). Marketing Research Report - Results of the 1978 Negro Market Audits (November 2, 1978). Cigarette Attitude Study Among Low Income Black Smokers [Benchmark] (July 1983). 1986 Cigarette Attitude Study Among Low Income Black Smokers (Wave III) (October 1986). Lorillard Memorandum Re: Cigarette Preferences Among Blacks to Jan. J. Stauto from Scott E. Benson (February 12, 1985). B&W Memo discussing "Conclusions based on Wave XIII and the latest Black Study," re: Kool Marketing Efforts (February 21, 1973).

¹⁸² Cigarette Attitude Study Among Low Income Black Smokers [Benchmark] (July 1983).

¹⁸³ Surgeon General (1998), *Tobacco Use Among U. S. Racial/Ethnic Minority Groups - African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General*, Atlanta GA: U. S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office of Smoking and Health.

¹⁸⁴ Journal of the National Medical Association - Guest Editorial "Race, Sex, Economics, and Tobacco Advertising" by Reed V. Tuckerson. NY Times Article *Blacks in Debate on Tobacco Industry Influences* by Lena Williams (January 17, 1987).

Tobacco Industry documents demonstrate that Tobacco Industry companies monitored smoking habits and cigarette consumption of Blacks since at least 1966 when the RJR "Negro Market Audits" and similar studies began and which continued until at least 1993.¹⁸⁵

Some of the reasons the Tobacco Industry saw the Black community as a profitable market segment for targeting are indicated in a 1984 document "Overview Analysis of Black Smokers".¹⁸⁶

¹⁸⁵ Market Research Report - Results of the 1970 Negro Market Audits (August 10, 1970); Market Research Report - Results of the 1971 Negro Market Audits (August 19, 1971); Market Research Report: *Results of the 1972 Negro Market Audits* (September 12, 1972). Letter from R.J. Reynolds Marketing Research Department to Paula Drillman re: (1) Profiles of Smokers Ages 14-20; (2) Our 1973 Negro Market Audits; and (3) a table showing the types of smokers who by Salem or Kool in addition to their usual brand (December 5, 1973). Marketing Research Report - Results of the 1978 Negro Market Audits (November 2, 1978). R.J. Reynolds Strategic Research Report entitled Younger Adult Smokers: Strategies and Opportunities (February 29, 1984); Bernard Howard & Co., Inc. "Smoking Patterns Among Negro & White Adults (undated). Memo to J. B. Stuart from C. L. Sharp re: Ethnic Research Black Smokers (June 25, 1979). Marketing Research Report - Brand Management Perspective (June 7, 1982). Memo to Maura Payne from Ellen Monahan re: RJR Performance Among Blacks (November 9, 1982). Marketing Development Intelligence Center. Company Share of Total Black Smokers. 1980 Black Smoker Study (1980). Memorandum re: Kool's Black Franchise (August 6, 1985). Smoking Initiation by Adolescent Girls, 1944-1988: An Association With Targeted Advertising (JAMA February 23, 1994). R.J. Reynolds Document entitled "Black Opportunity Analysis" (October 1985); Memo from W. F. Bultman to L. W. Hall Re: Share of Hispanic/black Smokers (October 10, 1985). B&W Memo discussing "Conclusions based on Wave XIII and the latest Black Study," re: Kool Marketing Efforts (February 21, 1973). Memorandum re: Cigarette Consumption Among Blacks [Project #1974-44] (October 4, 1974). Lorillard Memorandum to Ronald D. Hammer from Scott R. Benson re: Cigarette Attitude Study Among Low Income Blacks - Final Report (February 28, 1985). Cigarette Attitude Study Among Low Income Black Smokers (Wave II) (February 28, 1985). Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975). Black Smoker Characteristics Study (1975-78) (October 1978). Marketing To Blacks Volume 2: Characteristics of the Black Consumer by Cunningham & Walsh (August 1982). Lorillard Memorandum re: Switching Study Blacks (August 14, 1989). Memorandum re: Kool Demography Question (January 4, 1979). B&W Internal Correspondence Re: Factors Accounting for Kool Volume and Share Clinic (May 10, 1983). Document discussing "Blacks and Youth".

¹⁸⁶ Overview Analysis of Black Smokers (March 22, 1984).

The Black smoking population is very concentrated in terms of geographical location (central cities), magazine readership, and preferred hobbies/activities - so they should be efficient to reach.

The preferred product configuration is tightly defined -- full flavor and menthol are the choice of two-thirds of all Black smokers, and fully 80% of all Blacks smoke a solo menthol brand family when they are 18.

It is a large and growing population, and younger than the White population -- it will continue to be an important source of young adult smokers. Newport today, and Kool in the 1970s, benefited (sic) from this group.

Brown and Williamson also believed that African Americans were an especially attractive target because they were unlikely to refrain from smoking due to health concerns. A

"Confidential" 1979 Marketing Plan Summary states, with respect to strategies for one of its brands:

Other Opportunity Targets are blacks . . . since they tend to demonstrate a lack of personal concern over current health issues.¹⁸⁷

A 1978 memo by F. E. McKeown¹⁸⁸ regarding marketing strategy for the Kool Brands sets forth other reasons for targeting African Americans.

Switching study data indicates that the main groups accounting for the 93% loyal franchise are starters, young smokers, males and Blacks. We call this group "the young immorals."

Other reasons for targeting the Black population noted in Tobacco Industry documents include strong brand loyalty,¹⁸⁹ beliefs that the Black share of total smokers will increase as "the

¹⁸⁷ Brown & Williamson Tobacco Corp., 1979 Marketing Plans, Management Summaries.

¹⁸⁸ [Limited] Memorandum to F. E. McKeown from D. S. Johnston re: Rationale for Discontinuance (November 15, 1978).

¹⁸⁹ Cigarette Attitude Study Among Lower Income Blacks: Awareness, Attitudes, Usage (Section II) (March 1979). Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975). Black Smoker

white incidence declines." and "RJR's strength is sales strength among low income Blacks."¹⁹⁰

The Tobacco Industry even targeted the most vulnerable portions of the Black population such as "inner city Black smokers,"¹⁹¹ "low income Black smokers,"¹⁹² "youth and women."¹⁹³ Some research efforts were designed to assess reactions to print public service campaigns among smokers who were parents of children eight to sixteen years of age.¹⁹⁴

c. Targeted Marketing Campaigns

The Tobacco Industry's methods for targeting African Americans included extensive research to understand African American perspectives regarding smoking, status symbols, aspirations, social and cultural symbols, taste preferences, socioeconomic and demographics characteristics, smoking habits, and responses to test advertisements and new products.¹⁹⁵

Characteristics Study (1975-78) (October 1978). Marketing To Blacks Volume 2: Characteristics of the Black Consumer by Cunningham & Walsh (August 1982).

¹⁹⁰ Document discussing "Blacks and Youth".

¹⁹¹ Cigarette Attitude Study Among Lower Income Blacks: Awareness, Attitudes, Usage (Section II) (March 1979). Cigarette Attitude Study Among Low Income Black Smokers [Benchmark] (July 1983).

¹⁹² U. S. House of Representatives Hearing on The "Targeting" of Blacks, Hispanics, Other Racial Groups, and Women by Alcohol and Tobacco Company Advertising (March 1, 1990). Cigarette Attitude Study Among Low Income Black Smokers (Wave II) (February 28, 1985). R.J. Reynolds Document entitled "Black Opportunity Analysis" (October 1985). KOOL Presentation by E.T. Patrick (January 6, 1981).

¹⁹³ Letter to Ezra Davidson re: "Statement on Tobacco Advertising Aimed At Women" (undated).

¹⁹⁴ Letter from Market Development Inc., to K. L. Verner re: Qualitative Research for RJR in San Diego Among Hispanics and Anglos/Blacks (August 16, 1991).

¹⁹⁵ "Getting To Know The African American Market" by Leo Burnett Research and Planning Department (December 1993). Memorandum re: Cigarette Consumption Among Blacks

Findings of these researches have been used to develop extensive marketing campaigns,¹⁹⁶ even while members of the Tobacco Industry denied targeting Blacks "disproportionately".¹⁹⁷ These marketing campaigns, continuing in the 1990s, included new

[Project #1974-44] (October 4, 1974). "Analysis of Two Group Sessions Among Black Smokers of Mentholated Cigarettes, conducted for: William Esty, Inc. (January 1973). A Study of Ethnic Markets, R.J. Reynolds (September 1969). Bernard Howard & Co., Inc. "Smoking Patterns Among Negro & White Adults" (undated). Evaluation of Benson & Hedges "Creative Solutions" Advertising Concepts: Prospects for African American Reactions and Interpretations [Draft Report] by the Melior Group (January 1994). Summary Findings Memorandum/Newport (May 2, 1994). "Black Smokers as People" - Major differences between Black and White Smokers (undated). Overview Analysis of Black Smokers (1984). B&W Internal Correspondence re: *Young Black Smokers* (6/26/84). Memo to T. Humber from D. A. Beatty Re: Minority (Black/Hispanic) Demographics (May 22, 1985). "Blacks as People" RJR (1985). "Blacks as Smokers", RJR (October 1985). R.J. Reynolds Document entitled "Black Opportunity Analysis" (October 1985). Memo from W. F. Bultman to L. W. Hall Re: Share of Hispanic/black Smokers (October 10, 1985). Document discussing "Blacks and Youth". Cigarette Attitude Study Among Lower Income Blacks: Awareness, Attitudes, Usage (Section II) (March 1979). Lorillard Memorandum Re: Cigarette Preferences Among Blacks to Ian J. Stauto from Scott R. Benson (February 12, 1985). Report to P. Lorillard Company Re: Public Relations in Negro Markets (June 16, 1959). Report to Brown & Williamson Corporation Re: Black Smokers' Attitudes Towards Cigarettes and Cigarette Smoking (May 1976) (Market Facts, Inc.). Memo re: New Advertising Campaign - Salem (May 1, 1975). Memo to J. S. Carpenter from A. R. Cox, Marketing Research, R.J. Reynolds, Re: Black Smokers Focus Groups Report (December 15, 1976). "Biker Creative Elements Research" (Bates No. 679011893-1904). Final Report on African-American Consumers Reaction to Winston Select Campaign and Exposure by Paul A. Warner Associates (May 1992). Summary Report of Qualitative Research on Corporate Image Advertising Among African American Opinion Leaders by JRH Marketing Services (May 1990).

¹⁹⁶ Evaluation of Benson & Hedges "Creative Solutions" Advertising Concepts: Prospects for African American Reactions and Interpretations [Draft Report] by the Melior Group (January 1994). B&W Memo discussing "Conclusions based on Wave XIII and the latest Black Study," re: Kool Marketing Efforts (February 21, 1973). Memorandum re: Cigarette Consumption Among Blacks [Project #1974-44] (October 4, 1974). A Study of Ethnic Markets, R.J. Reynolds (September 1969). "Kool Strategic Brand Plan" (1980). 1980 Black Smoker Analysis for Kool - internal correspondence (December 14, 1981). Winston Cigarettes Marketing Plan Negro Market (February 1972).

¹⁹⁷ Minority Advertising (June 23, 1989).

products such as Uptown¹⁹⁸ that were explicitly developed to appeal to the African American community,¹⁹⁹ advertisements using social and cultural symbols designed to appeal to African Americans' aspirations,²⁰⁰ advertisements using Black celebrities, achievers, models and actors,²⁰¹ reduced cost (price discounts and coupons) sales promotions,²⁰² in-store displays and promotions,²⁰³ ad placements in Black owned print media,²⁰⁴ carefully planned sales promotions including sampling cigarettes to key community leaders and "communicators"²⁰⁵ and routine

¹⁹⁸ Uptown Cigarette Damage Assessment Study by The Wellington Group and Lockhart & Pettus, Inc. (January 31, 1990).

¹⁹⁹ "New Cigarette Aims at Blacks, Affluent White Women" - received from Baltimore Division (unidentified) (July 15, 1981). "Kool Strategic Brand Plan" (1980). "Blacks" (undated). Uptown Cigarette Damage Assessment Study by The Wellington Group and Lockhart & Pettus, Inc. (January 31, 1990). Project UT Public Relations Plan (1990). Letter to Roger L. Beahm from John Singleton re: 1993 Schedule for Ads Planned to Run in African-American Magazines (March 23, 1993). Proposed Media Q & A -Project UT (undated). Public Relations Plan -Project UT (undated). DFS/Lorillard Strategic Planning 1984-1986: Lorillard, True (January 27, 1984).

²⁰⁰ Brown & Williamson Market Research Report: "Black Smokers" Attitudes toward Cigarettes and Cigarette Smoking. "Blacks as People" RJR (1985).

²⁰¹ DFS/Lorillard Strategic Planning 1984-1986: Lorillard, True (January 27, 1984). KOOL Commercial History- TV (10/27/80). Letter from L. M. Marshall, Bates Advertising, to Mike Wilson re: KOOL Analysis of Brand Switching Study- Wave #18 (September 10, 1975).

²⁰² Phillip Morris Inter-Office Correspondence re: B&H 100's/85's -FSI in African American Newspapers (June 28, 1993). Cigarette Attitude Study Among Low Income Black Smokers (Wave II) (February 28, 1985).

²⁰³ Cigarette Attitude Study (Among Low Income Black Smokers) (August 1983).

²⁰⁴ Memo re: Ethnic Ad Schedule (January 24, 1994). KOOL Strategic Brand Plan (Bates No. 670624652-4705).

²⁰⁵ Memo from George A. Dean to J. A. Albanese, RJR, re: *Camel Menthol and the Negro Market* (November 9, 1967). Letter re: National Association of Negro Business and Professional Women "Las Vegas Night Fundraising Extravaganza" (October 7, 1986).

smokers,²⁰⁶ extensive public relations campaigns involving creation and sponsorship of community and cultural events such as music festivals²⁰⁷ and sporting events with special Black emphasis,²⁰⁸ sponsorship of and involvement with Black community organizations²⁰⁹ and schools.²¹⁰ The Tobacco Industry even produced "image ads" and press releases expressing support for "equality" of African Americans couched in terms of what the Tobacco Industry and individual companies have done for the African American community, and justifying marketing cigarettes to African Americans as a demonstration of equal treatment and civil rights.²¹¹

The Tobacco Industry's marketing campaigns aimed at the African American community violated representations made by the Tobacco Industry to the African American community and

²⁰⁶ Cigarette Attitude Study Among Low Income Black Smokers (Wave II) (February 28, 1985).

²⁰⁷ 1999 Benson & Hedges Blues and Rhythm Minority Advertising Events Schedule [African American] (April 1993). Internal Correspondence Re: Kool Jazz Festival - New York (November 19, 1981). Memo to T. Humber from D. A. Beatty Re: Minority (Black/Hispanic) Demographics (May 22, 1985). Internal Memo Re: Young Black Smokers (June 26, 1984). Black Media, Inc. Letter to Stanley Scott, Vice President of Philip Morris re: Supporting the Tobacco Industry As A Whole (June 22, 1984). Key Issue, RJR (1985). Letter re: National Association of Negro Business and Professional Women "Las Vegas Night Fundraising Extravaganza" (October 7, 1985). Suggested Response to Inquiry Minority Marketing from Rick Kash to R. J. Reynolds (September 30, 1982).

²⁰⁸ Key Issue, RJR (1985).

²⁰⁹ Internal Memo Re: Young Black Smokers (June 26, 1984). Project UT Public Relations Plan (1990). Remarks by James W. Johnston to the NNPA Executive Committee - The Piedmont Club (November 12, 1990).

²¹⁰ Document entitled "Future Considerations" (undated). Lorillard Memo re: Function Request- Milwaukee Great Lakes Beverage Association (July 20, 1992).

²¹¹ Remarks by James W. Johnston to the NNPA Executive Committee - The Piedmont Club (November 12, 1990). "Outline," Remarks by Ben Ruffin [NNPA Mid Winter Conference].

violated the Cigarette Advertising Code adopted in 1964 which states, "Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success or sexual attraction."

d. Public Relations Campaigns

Public relations campaigns involve using news media and special events to communicate information. Often the goal is to create images of being a good neighbor image, a trusted member of the community, and a responsible provider of safe products.²¹² The Tobacco Industry carried out two main types of activities: mass media public relations campaigns,²¹³ Messages presented tobacco companies as champions of American values of racial equality, as friends to Blacks,²¹⁴ and as involved community members sponsoring, supporting and addressing charity, educational and professional organizations and cultural events.²¹⁵

The objective of such public relations campaigns, were, in the words of a 1990 RJR Corporate Affairs Plan, "to enhance its corporate image and gain more favorable minority community support."²¹⁶ This plan included lists of conferences of Black organizations targeted

²¹² Dayn Mark Advertising "Proposal for RJR Nabisco, Inc." (May 2, 1990).

²¹³ Black Media, Inc. Letter to Stanley Scott, Vice President of Philip Morris re: Supporting the Tobacco Industry As A Whole (June 22, 1984). 1990 Corporate Affairs Plan (1990). Dayn Mark Advertising "Proposal for RJR Nabisco, Inc." (May 2, 1990). Minority Affairs Presentation (March 6, 1991).

²¹⁴ Responses to Tobacco Industry Questions from Dollars and Sense (May 1990).

²¹⁵ Minority Affairs Presentation (March 6, 1991). "Minority Affairs Presentation to Jim Johnston" (March 22, 1991). Final Report on African-American Consumers Reaction to Winston Select Campaign and Exposure by Paul A. Warner Associates (May 1992). Report to P. Lorillard Company Re: Public Relations in Negro Markets (June 16, 1959).

²¹⁶ 1990 Corporate Affairs Plan (1990).

for RJR participation, plans for an extensive "minority advertising plan," and sample corporate image ads demonstrating support for Black history and issues..

The Tobacco Industry's use of "racial equality" in public relations campaigns is illustrated by the Philip Morris document "Marketing to Blacks (Minorities) Message Points".²¹⁷

PM markets its products to all adults who choose to smoke - regardless of race, creed, color or gender.

Blacks (and other minorities) are as capable as any other group in determining whether or not they choose to smoke.

Our critics seem to believe that minorities are more susceptible to advertising than other groups. All advertising provides a choice of brands from which to choose - it does not make a person take up an activity. Again, the assumption here seems to be that minorities are easily influenced and can't be trusted to make adult consumer choices for themselves.

Regarding advertising, critics should look at those advertisers who *aren't there*. PM respects and values and advertises with all of its consumers. Blacks (for instance) also do banking, buy cars, pantyhose, etc. You won't see these advertisers in minority publications. This is "racism by omission". PM has, by the way, been advertising in Black newspapers, supporting Black organizations, and hiring Blacks since the 1940s because it was the right thing to do. As a result, the company was boycotted by white supremacist organizations. ...

Consider also the wording of a RJR statement²¹⁸ ad intended to be an insert in Black and Hispanic "convention-issue" publications in 1987. The headline states "WE'D LIKE TO SEE THE NAACP GO OUT OF BUSINESS." This is followed by the following statement:

We hope to see the day when no one has to fight for civil rights and equal opportunity ever again. When those things truly become facts of life, no one will need groups like the NAACP. Meanwhile, to hasten that day's arrival, RJR Nabisco will keep being one of the largest supporters of the United Negro College Fund and other minority scholarships. And we will keep increasing our business

²¹⁷ Marketing to Blacks (Minorities) - Message Points.

²¹⁸ "We'd Like to See the NAACP Go Out of Business" - Advertisement for Black and Hispanic Special Convention - issue Publications (undated).

with minority bankers, insurance firms, and other minority businesses. And we keep searching for new ways to help bring about real freedom.

A second similar statement was made by RJR in 1987²¹⁹ and in 1989 RJR developed a set of suggested responses to criticisms for targeting minorities.

Isn't it unethical to target ads to for products that the Surgeon General has said are dangerous to your health to minorities and women?

No, and to say it is reflects bigotry on the part of the questioner. We believe all segments of the adult population are capable of making an informed decision about whether or not they want to smoke, and what brands they choose to smoke.²²⁰

Through such rhetoric and similar public relations statements²²¹ the Tobacco Industry endows itself with an image of trust, honesty, understanding and concern for the African American community, thus distracting Blacks from the risks of death and disease at which smokers are placed. Consider the following statement from Reed V. Tuckson, M.D.,

Commissioner of Public Health, District of Columbia.²²²

Where do cigarette companies go to find these new recruits for the death march to the land of profit and greed? They go not only to the children, but also to the other vulnerable and oppressed segments of our country. They go to people of color, to women, and to the poor. It is a conscious, deliberate and, as Dr. Edwin Fisher has said, 'a predatory strategy to further victimize the victims, with the only purpose, the sole goal, to make money.'

²¹⁹ "We Want Blacks to Have Less" - Advertisement for Black and Hispanic Special Convention Issue Publications (undated).

²²⁰ Minority Advertising (June 23, 1989).

²²¹ Responses to Tobacco Industry Questions from Dollars and Sense (May 1990).

²²² Journal of the National Medical Association - Guest Editorial "Race, Sex, Economics, and Tobacco Advertising" by Reed V. Tuckerson. NY Times Article *Blacks in Debate on Tobacco Industry Influences* by Lena Williams (January 17, 1987).

Consider the following statement attributed to a Brown & Williamson Discussion Paper -
Total Minority Marketing Plan.²²³

Clearly, the sole reason for Brown & Williamson's interest in the black and Hispanic communities is the actual and potential sales of Brown & Williamson products within these communities, and the profitability of these sales.

However, any cost increment must be weighted against the alternative of continued loss of revenue due to the current rate of declining share in the minority, community and potential sales not realized from untapped segments in this market.

e. Black Oriented Advertising

As early as the mid-1950s, the Tobacco Industry made regular use of Black celebrities²²⁴ such as Louis Armstrong. However, in the 1960s, with the rise of the Civil Rights movement, the Tobacco Industry began to carry out cultural, social and psychographic research to understand the desires and aspirations of African Americans so that advertisements could exploit image symbols important to African Americans. In 1984, M. D. Harris wrote to W. K. Neher to provide an overview of RJR's 1984 Black Segment Descriptor study.²²⁵ She writes:

The most significant finding from this research is that one common element is consistent among all Black smokers -- upward striving, a desire to better oneself. This desire is far more important to Black smokers than to their White counterparts, especially among younger. . . Black smokers. However, given their demographics i.e., less education, more blue collar occupations, lower incomes, Black smokers feel powerless to achieve this desire and seek attainable symbols as a means to realize their dreams. For example, Black smokers tend to pay careful attention to matters of appearance like style and dress, read specific

²²³ Memo to T. Humber from D. A. Beatty Re: Minority (Black/Hispanic) Demographics (May 22, 1985).

²²⁴ R. J. Reynolds, Camel Cigarettes, Negro Stations, 60 Seconds, Special Louis Armstrong Commercial.

²²⁵ Letter to M. D. Harris from W. K. Neher re: Overview Analysis of Black Smokers; March 22, 1984.

magazines devoted to latest styles for men and women" "...Black smokers also have a much more positive attitude toward smoking than do White smokers, and they appear to also use smoking as support for their [image] desires.

Similar observations are found in other Tobacco Industry research reports and marketing plans,²²⁶ while other projects saw opportunities for tying cigarettes to "Black Pride" and for seizing on symbols of success and achievement for recruiting new smokers and switching smokers from the "young" Black population.²²⁷ Again, contrary to the Cigarette Advertising Code, the Tobacco Industry was marketing cigarettes by depicting smoking as essential to social prominence, distinction, success or sexual attraction.

By the 1970s efforts to advertise cigarettes explicitly to African Americans were extensive²²⁸ and expenditures in Black owned print media grew dramatically. In 1975, RJR reported spending \$800,000 on Black media and Winston Super King Menthol²²⁹ and in 1992,

²²⁶ Overview Analysis of Black Smokers (March 22, 1984). R.J. Reynolds Strategic Research Report entitled Younger Adult Smokers: Strategies and Opportunities (February 29, 1984). B&W Marketing Plan: *Kool Family Utopia Objectives*, 1979-1985 (1979).

²²⁷ R.J. Reynolds Strategic Research Report entitled Younger Adult Smokers: Strategies and Opportunities (February 29, 1984).

²²⁸ Winston Cigarettes Marketing Plan Negro Market (February 1972). Letter re: Winston Super King- Super King Menthol "New Strategy" (May 1, 1975). Memo to Diane Laska from Garrison Jackson, Advertising Expert, New York, NY, re: African-American Spending Estimates for '92 by Brand or Department (April 24, 1992). Advertising Expert "1992 Benson & Hedges African-American Print Plan." B&W Marketing Plan: *Kool Family Utopia Objectives*, 1979-1985 (1979).

²²⁹ Letter re: Winston Super King- Super King Menthol "New Strategy" (May 1, 1975).

RJR estimated expenditures in Black owned magazines of almost \$1,989,081 and \$2,047,556.40 in 10 Black oriented newspapers.²³⁰

4 Targeting Blue Collar Workers

There is substantial evidence that the Tobacco Industry was aware that health risks in many blue collar occupations could be exacerbated by cigarette smoking²³¹ and that, despite this awareness of the health vulnerability of Blue Collar workers, the companies of the Tobacco Industry developed and implemented marketing programs directed to Blue Collar Workers.²³²

These programs, coupled with lower educational levels and the Tobacco Industry's misinformation campaign regarding smoking and disease, made the Blue Collar Worker population less able to make an informed choice about smoking in light of scientific evidence of risks of disease, particularly in regard to the greater risk of disease suffered by Blue Collar smokers. A memo from Samuel Gen of Philip Morris dated August 5, 1987²³³ reports on Roper Poll data from 1986 on American's perceptions of health risks. Included is a chart profiling persons likely

²³⁰ Memo to Diane Laska from Garrison Jackson, Advertising Expert, New York, NY re: African-American Spending Estimates for '92 by Brand or Department (April 24, 1992). Advertising Expert "1992 Benson & Hedges African-American Print Plan."

²³¹ Letter from Theodor D. Sterling to Dr. William U. Gardner (March 1, 1976). *The Health Consequences of Smoking, Cancer and Chronic Lung Disease in the Workplace, a Report of the Surgeon General*; (1985). Memorandum to Horace R. Kornegay from Fred Panzer re: *The Roper Proposal* (May 1, 1972).

²³² Demographic Profile of Male LO-FI Under 40, Female LT/VAT under 40, All LT/VAT Under 40, Male Blue Collar & Black Smokers, Cigarette Brand Switching Study, conducted by Ad Factors, Inc. (January-December 1984). Viceroy Switching Study Analysis-Wave 28 (February 4, 1981). Viceroy-1983 Key Issues (Bates No. 670106893-6961). KOOL Presentation by E.T. Patrick (January 6, 1981).

²³³ Phillip Morris Inter-Office Correspondence re: Mortality in the U.S.; Perceived Risk Versus Real Risk (August 5, 1987).

to see cigarette smoking as a minor risk. This profile includes: "male," "Black," "18-28 year olds," "low income household", "blue collar worker," "non high school education," "independent" and "live in the South."

Other research findings also note the decreased recognition of the health risks of smoking among those persons with lower educational achievements.²³⁴

Evidence of Tobacco Industry awareness of the risk of disease associated with blue collar work is found in the research reported in 1976 by Theodore Sterling of Simon Fraser University, a critic at the time of claims of health risks, but who none-the-less noted the unmistakable statistical patterns and their implications. As Sterling wrote to Dr. William U. Gardner of The Council for Tobacco Research²³⁵ in the letter of transmittal for a study of United States smokers by occupation, sex and race:

Although we try to avoid becoming embroiled in any controversy, the implications of looking at occupation and smoking are practically mind boggling. Smokers turn out to come from mostly blue collar occupations where they are exposed with high probability to toxic dusts, fumes, and chemicals..."

Thus, although the cigarette manufacturers were aware of health vulnerability factors associated with blue collar occupational positions, the Tobacco Industry nonetheless successfully continued to pursue blue collar workers as smokers. In fact, the National Center for Health Statistics data reported by Alan Blum, Chairman of Doctor's Ought to Care, in a 1986 *Washington Post* article "Selling Cigarettes: the Blue Collar, Black Target" (Sunday, May 18,

²³⁴ Demographic and Socioeconomic Differences in Beliefs about the Health Effects of Smoking (American Journal of Public Health, January 1992).

²³⁵ Letter from Theodor D. Sterling to Dr. William U. Gardner (March 1, 1976).

1986)²³⁶ documented that by 1986, an estimated 43% of Blue Collar Men and 39% of Blue Collar women were smokers as compared to 28% of White Collar men and 30% of White Collar

Women

The increasing blue collar dominance among smokers was not lost on the Tobacco Industry. As early as 1973 Philip Morris, in its study *Smoking and Socioeconomic Status*, noted the "... strong occupational class effect ..., the proportion of smokers being greater among working class occupations." So strong was the relationship of occupational status in this study that 43.4% of the "Professional, -Technical" occupational class smoked, as compared to 58.2% of "Foremen and Craftsmen" and 69.1% of "Operatives, Unskilled Laborers."²³⁷

By 1989, in the study *U.S. Cigarette Market in the 1990's*,²³⁸ RJR noted the declining proportion of smokers in the U.S. population resulting from public awareness and responses to evidence of linkages between smoking and disease. This report also noted that these trends were leading to more rapid declines in smoking from among white collar workers than from among blue collar workers. The report notes that while the prevalence of smoking among professional/manager workers declined from 38% in 1970 to 21% in 1989 and was projected to decline to 14% by 1995, among blue collar workers the decline was from 44% in 1970 to 32% in 1989 and was projected to drop only to 28% by 1995. Based on this data, RJR concluded:

²³⁶ Selling Cigarettes: The Blue Collar, Black Target, Alan Blum, Washington Post (May 18, 1986).

²³⁷ Smoking and Socioeconomic Status (1973).

²³⁸ "U.S. Cigarette Market in the 1990's" (June 21, 1990).

Thus, marketing must tap into values and mindsets consistent with more a more beleaguered smoking population and one that is increasingly blue collar/ethnic/less educated.²³⁹

Recognizing the growing importance of blue collar smokers and concerned that increases in cigarette prices might reduce Blue Collar propensity to smoke, in 1982 Philip Morris studied trends in Blue Collar disposable income from 1972 to 1981 and projections for the 1982 to 1986 period, and compared these to trends and projections in cigarette prices. This study concluded

It appears that blue collar spending power will continue to outpace cigarette price increases, unless the federal excise tax is doubled.²⁴⁰

One example of the targeting of blue collar workers through special marketing programs is illustrated by the "Blue Collar Ohio Test Proposal" and the "Preliminary Activity Schedule for Southern Ohio/Lexington, KY, Sampling Team" developed by RJR for Spring, Summer and Fall of 1986.²⁴¹ These programs, budgeted at \$1,255,000 involved sending "traveling field promotion teams

... to execute intercept coupon volume promotions targeted specifically at blue collar smokers within a designated promotion territory. Ten to twelve teams would be required to execute the program nationally."

This program was to involve actual visits to blue collar neighborhoods, workplaces and special events such as Winston sponsored events, state, county and local fairs and festivals, auto shows, construction and industrial sites, flea markets, farmers markets, truck terminals, bowling leagues, wrestling matches, and softball tournaments. The "Promotional Objective" of this program was:

²³⁹ "U.S. Cigarette Market in the 1990's" (June 21, 1990).

²⁴⁰ Phillip Morris U.S.A. Inter-Office Correspondence re: Blue Collar Disposable Income (January 22, 1982).

²⁴¹ Blue Collar Ohio Test Proposal (505602329-6968).

Complement the existing Intercept Couponing Program with field delivered purchase incentives aimed at increasing volume of WINSTON and SALEM among blue collar smokers:

- Extend reach of intercept couponing to smaller blue collar industrialized markets.
- Place emphasis on blue collar workers, often missed by the current distribution downtown and in-store.
- Provide cost efficient distribution of purchase incentives through traveling field teams.²⁴²

A similar program was proposed in 1981 with a national focus²⁴³ and the following objectives:

The prime objective of this combined program, reaching, masculine, cut above Construction Workers, other Blue Collar workers and, where possible in existing markets, commercial fishermen will be to create 'living, residual advertising' by means of premium giveaways to the targeted American worker of Winston hats, Winston t-shirts, and Winston beverage coolers.

Additionally, this theme will be further exploited by the affixing of Winston tarpaulins, poster ads, banners and giant packs to prominent facades in locations visible to large volumes of pedestrians and/or automobile traffic.

The secondary objective of this program will be to generate quality targeted trial across all six Winston brand styles by distribution of gratis 12's except in those areas where only 20's may be utilized.

These objectives will be achieved at 150 construction sites in the early stages of development so that workers and promotional material are easily visible from the street; as well as a number of other Blue Collar sites in markets selected from the Winston family [98] market list."

Clearly the plan was designed to maximize visibility and blue collar impact. Elsewhere in the plan it is noted that: "[t]hose scheduled Construction Sites which are downtown, have large numbers of workers and/or may be subject to many civilian passersby ..."

²⁴² Blue Collar Ohio Test Proposal (505602329-6968).

²⁴³ Pennelly Marketing Proposal: R. J. Reynolds Work Site Program (June 29, 1981).

Through such programs of advertising images appealing to blue collar identity and aspirations, through intensive sampling programs, through smoking related promotional programs to get blue collar workers to display cigarette brand names and identify with brands, through sponsorships of special events expected to draw blue collar workers and their families, through billboards and other forms of outdoor advertising in blue collar work areas, and through careful pricing, the Tobacco Industry targeted blue collar workers so as to recruit new smokers and retain current smokers from a class of working people whose educational backgrounds often placed them at a disadvantage when assessing the link of smoking to disease due to the Tobacco Industry's simultaneous campaign of public mis-information in violation of their previous promises and the Cigarette Advertising Code.

5. Women

The Tobacco Industry has targeted women as a market segment with the intention of attracting new smokers and preventing women from quitting. A review of trends in female smoking and particularly the initiation of smoking by adolescent girls can be found in Pierce and Gilpin's 1994 JAMA article²⁴⁴ which concluded that Tobacco Industry advertising in the late 1960's was successful in attracting women younger than the legal age to the purchase of cigarettes. Even the "Negro Market Audits" which began in the 1960's²⁴⁵ contributed to monitoring female smokers. A

²⁴⁴ *Smoking Initiation by Adolescent Girls, 1944-1988: An Association With Targeted Advertising* (JAMA February 23, 1994).

²⁴⁵ *Market Research Report: Results of the 1972 Negro Market Audits* (September 12, 1972).

1975 letter from Craig C. Standon to D. A. Boyd²⁴⁶ noted that over \$5,000,000 was spend on Winston media advertising targeting age group 25 to 49 with a special emphasis on women.

Efforts to target women as potential smokers have been pursued by carefully researching women's orientations and behavior in regard to smoking, by developing special brands oriented to women and new differentiated products represented by these brands, by sponsoring women-oriented special events such as the Virginia Slims Tennis tournament, by developing special advertising themes designed to appeal to women, and by advertising in women's oriented magazines.

To illustrate targeting with the intention of recruiting new smokers, consider recent shifts in expenditures by Tobacco companies in magazines with high proportions of young girl readers for 1998.²⁴⁷ For example, comparing the January to September 1998 period with the corresponding 1999 period, advertising expenditures on Essence with 17.5% of its readers being age 12 through 17, increased by 104%; Elle, with 24.2% readership age 12 through 17, increased by 37.7%; Glamour, with 19.8% readership age 12 through 17, increased by 32.1%, Mademoiselle, with 23.7% readership age 12 through 17, increased by 24.1%.

Tobacco Industry documentation regarding the development of the Dakota brand is illustrative of the way the Tobacco Industry sought to develop brands and design corresponding products targeted to women. The Dakota product development and marketing plans were code

²⁴⁶ Letter re: Winston Super King- Super King Menthol "New Strategy" (May 1, 1975).

²⁴⁷ *Cigarette Advertising Expenditures Before and After the Master Settlement Agreement: Preliminary Findings* (May 15, 2000).

named VF.²⁴⁸ The project sought to recruit 9% of female smokers age 18 to 24 in 1990. In a RJR Market Research Report dated April 25, 1989²⁴⁹ we find the following quotations.

- Learning from Project Delta suggests that an opportunity exists to develop a cigarette brand which provides 18-20 year old female smokers with an alternative to Marlboro. Project VF will address that opportunity by providing a relevant, contemporary image in combination with a product which provides a smooth tobacco taste and a noticeable product point of difference versus Marlboro.

- The 'Dakota' positioning provides the stability/control of a Marlboro-like image while maintaining a more feminine appeal.

- Further exploration suggests that the inability of current "female brands" to provide a meaningful positioning against younger adult females strengthens Marlboro's position as the only appropriate option for these women.

And, based on focus group findings, including focus groups with "young" women,": "[t]he 'Dakota' positioning provides stability/control of a Marlboro-like image while maintaining a more feminine appeal."

Other focus group research with young women age 18 to 20 explored the life style and smoking orientations of young women and their responses to Dakota ad themes and artwork.²⁵⁰

In viewing the array of campaigns, these 18-20 year old female Marlboro smokers found the attitude of the woman in the campaigns most appealing. Many felt that the woman was her own person, in control of her life, but adventurous and kind of daring. They stated that she would like a challenge and wasn't afraid to speak her mind. It appeared that this attitude was something they had not quite obtained but aspired to have."

²⁴⁸ Market Research Report - Project VF Qualitative Research (April 25, 1989). Dakota Squad Execution Plan [First Draft] (507357007-7008). 1990 Marketing Strategy Summary - Project VF (507174494-4496). R.J. Reynolds Inter-Office Memorandum re: Project VF (April 24, 1989). Letter re: Cost Estimates for VF FFLT (October 31, 1989). Dakota (506858819). Product Research Report: Dakota Lights 100MM Prototype Test (November 1, 1990).

²⁴⁹ Market Research Report - Project VF Qualitative Research (April 25, 1989).

²⁵⁰ Market Research Report - Project VF Qualitative Research (June 1, 1989).

Aggressive programs were planned to introduce the new Dakota brand to its target market of young women. These plans included the "Dakota Squad"²⁵¹ and similar programs²⁵² in which local marketing personnel would be hired and trained to introduce the new teenage girl and young adult female oriented brand to targeted potential users at special events, beaches, young adult night clubs, taverns and bars. Squad members, dressed in Dakota branded apparel, were to engage young women in conversation and in bar games, distribute samples of the new addictive product being offered, create competitions for Dakota premiums, place promotional signage in the visited locations, and monitor and replace depleted inventories at promotion locations.

Just as Dakota was targeted to young teenage girls in the 1990's, other brands beginning as early as the 1960s and 1970's were developed to appeal to women. These brands recognized background research showing women's greater expressions of health concerns and despair over inability to quit.²⁵³ These included Eve and Virginia Slims. Brown and Williamson, noting that between 1964 and 1969 women consumed 36% to 40% of United States cigarette volume, targeted young women for Vanguard and Life brands with the advertising objective: "[t]o position the brand as the cigarette a women should smoke if she wants to be completely feminine - 'The long, slim cigarette that is strictly a woman's affair.'"²⁵⁴

²⁵¹ *Dakota Squad Execution Plan [First Draft]* (507357007-7008).

²⁵² Memo re: *Dakota Sales Representative Consumer Kit* (October 27, 1989).

²⁵³ *Background Attitudes* (Bates No: 502030644-0657).

²⁵⁴ *New Product Concepts* (670186789-6824).

In addition, at least one older brand, Belair, also targeted women and by the 1980's made women the majority of its target market. A 1982 marketing document²⁵⁵ defines the target audience for Belair as 35% male and 65% female, over age 30, lower to middle class socioeconomically, and having "traditional values," attitudes and lifestyles.

G. Conclusion

The Tobacco Industry operated a deliberate and organized campaign involving dishonest, deceptive and manipulative public relations communications to misrepresent claims about a causal connection between cigarette smoking and diseases including lung cancer and the addictiveness of nicotine. These claims and misrepresentations occurred even though the Tobacco Industry's own internal documents disclosed that the Tobacco Industry believed that a causal relationship exists and that nicotine is addictive.

The actions of the tobacco industry were in direct violation of their public pledge in 1954 to treat health as a paramount concern, to perform the necessary research on the relationship between smoking and health, to tell the truth about the information received, and to make this information known to the public. The Tobacco Industry knowingly and intentionally violated that promise by deliberately using deceptive, misleading, and manipulative advertising, marketing, and public relations devices that served to undermine free choice.

The Tobacco Industry also engaged in these false and misleading efforts to recruit new smokers at the earliest age possible, to discourage or prevent current smokers from quitting, to assure the addicted customers that smoking is safe, and to deepen the penetration of vulnerable markets in an attempt to compensate for declining smoking rates in less vulnerable, more educated markets.

²⁵⁵ Untitled Document; (Bates No. 516006827).

These marketing and public relations campaigns were in direct violation of the Tobacco Industry's promises and public statements and their voluntarily adopted Cigarette Advertising Code.

As a result of these various efforts, more people started to smoke and continued to smoke than otherwise would have if the Tobacco Industry had told the truth and lived up to its promises.

Necessarily, because of the Tobacco Industry's wrongful acts, more people suffered disease caused by smoking, resulting in an indivisible injury to entities such as Owens Corning, which were forced to pay for disease that is rightly attributable, in large part, to cigarette smoking and the wrongful conduct set forth above.

produced by RICHARD
in
HUMPHREY

Submitted this 19th day of June, 2000.

Glenda B. Glover
Glenda B. Glover, Ph.D., J.D., CPA

Kimball P. Marshall
Kimball P. Marshall, Ph.D.

HUMPHREY

in

Produced by RJRT

2

HUMPHREY

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produced by RJRT

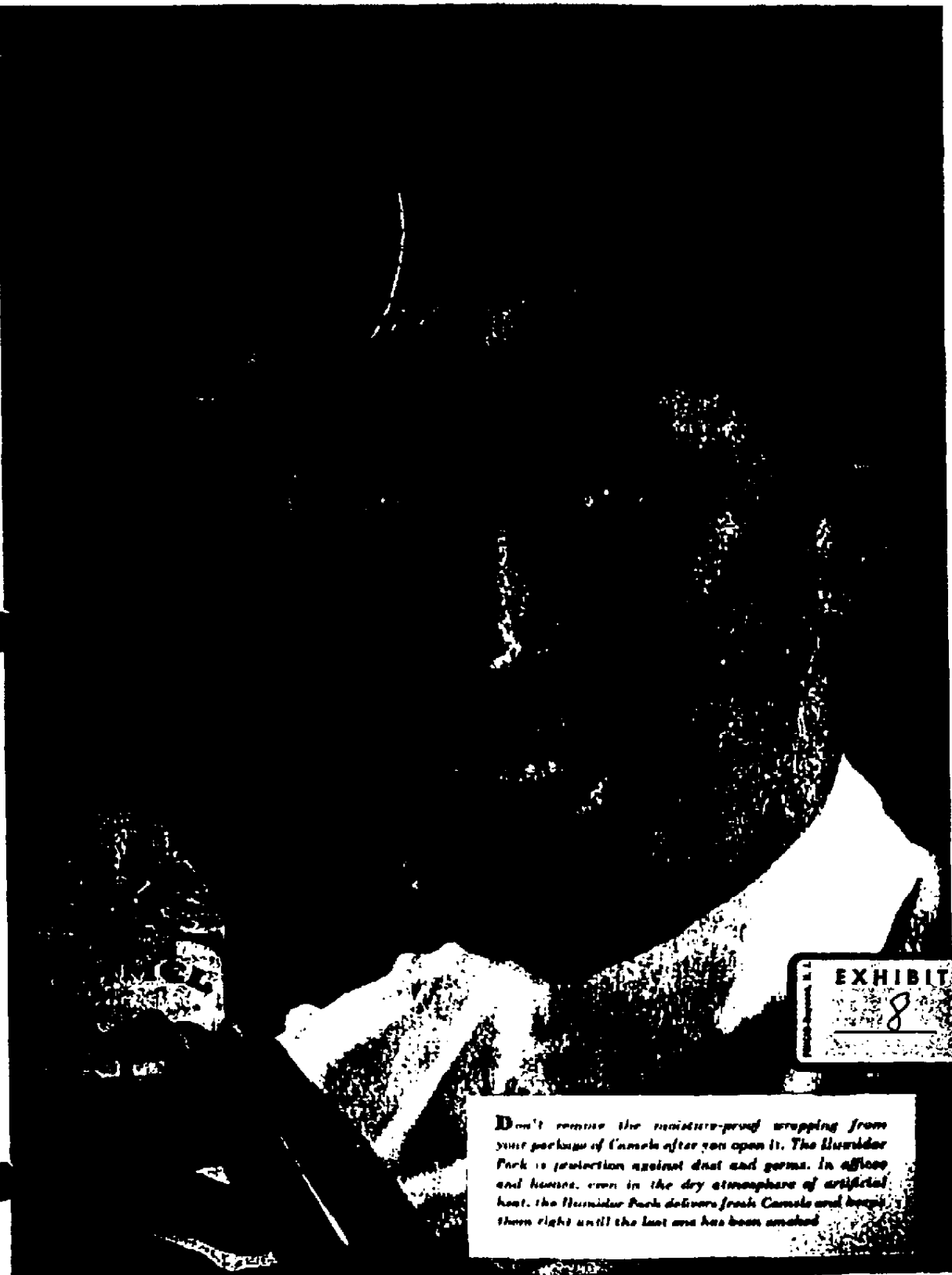


When Tempted
Reach
for a
LUCKY
instead

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produced by RJRT
in
HUMPHREY



Don't remove the moisture-proof wrapping from your package of Camels after you open it. The Humidor Pack is protection against dust and germs. In offices and homes, even in the dry atmosphere of artificial heat, the Humidor Pack delivers fresh Camels and keeps them right until the last one has been smoked.

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9

HUMPHREY

in

produced by RPTC

1949

How mild can a cigarette be?

DOCTORS REPORT

In a recent test of hundreds of people who smoked only Camels for 30 days, noted throat specialists, making weekly examinations, reported

**"NOT ONE SINGLE
CASE OF THROAT
IRRITATION
DUE TO SMOKING
CAMELS!"**



SMOKERS REPORT

"I MADE THE CAMEL
30-DAY TEST AND I
KNOW! CAMELS ARE
THE MILDEST CIGARETTE
I'VE EVER SMOKED—
AND SO GOOD
TASTING, TOO!"

Rita Edwards

ALBANY, OREGON

© J. R. R. Tobacco Company, Winston-Salem, N.C.

According to a nationwide survey:
More Doctors Smoke Camels
than any other cigarette

When three leading independent research organizations asked 13,000 doctors what cigarette they smoked, the brand named most was Camels!



10
TUNNIPURE
in
produced by RJKT

CIGARETTE ADVERTISING CODE

STATEMENT OF PURPOSES

The purposes of this Code are to establish uniform standards for cigarette advertising and to provide means whereby compliance with this Code can be ascertained promptly and fairly and on a consistent basis.

ARTICLE I

DEFINITIONS

Section 1. "Advertising":

- (a) Means all forms of advertising in, or primarily directed to, the United States, Puerto Rico, any territory or possession of the United States, or any military installation of the United States, including, but not limited to, radio, television and cinema commercials of all types, newspaper and magazine advertisements, billboards, posters and signs, subway and rail or bus car cards, automobile and truck decals, posters and signs, calendars, pamphlets, handbills, matchbook advertising, and point of sale display material of all types:
- b) Includes any written material or article or excerpt therefrom, not otherwise advertising, when used for promotional purposes;
- c) Includes labeling, namely, the display of written, printed, or graphic matter upon any portion of the package, carton, or other container in which cigarettes are packaged or shipped by the manufacturer; but
- (d) Does not include the entertainment portion of any television or radio program.

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SECTION 2. "Cigarette" means any roll of tobacco wrapped in paper or in any substance other than tobacco.

SECTION 3. "Representation" means any statement, reference, or claim express or implied, direct or indirect, whether in oral, written, printed or graphic form, or in any combination of such forms.

ARTICLE II

THE CODE ADMINISTRATOR

SECTION 1. There shall be a Code Administrator who shall be a person of recognized independence, integrity and intellectual achievement to the end that decisions by him shall command public confidence and respect. The Administrator shall have all of the powers and authority necessary and proper to enable him to discharge effectively the responsibilities entrusted to him by this Code.

SECTION 2. The Administrator shall have complete and final authority to determine whether cigarette advertising complies with the standards of this Code and to enforce this Code in all other respects.

SECTION 3. The Administrator shall appoint a staff adequate and competent to assist him in discharging his duties.

SECTION 4. Neither the Administrator nor any member of his staff shall be an officer, director, employee or stockholder of any manufacturer of tobacco products, nor shall any such person have any financial interest in the business of any such manufacturer.

SECTION 5. The Administrator is authorized to convene scientific advisory panels to enable him to carry out his duties. Persons selected for such panels shall be of independence, integrity and competence in their particular areas of scientific

discipline. In selecting such persons, the Administrator may consult with appropriate governmental and private agencies such as the U. S. Department of Health, Education and Welfare; National Academy of Sciences; National Research Council; American Medical Association; Scientific Advisory Board of The Council for Tobacco Research—U. S. A.; medical and scientific societies; colleges and universities; and non-profit research institutes.

Section 1. The Administrator shall by regulation establish procedure for the administration and enforcement of this Code including, without limitation, procedure for:

- (a) The submission to him of proposed cigarette advertising which, together with any supporting data or documents, shall be kept confidential, except as otherwise provided in ARTICLE IV, Section 4, of this Code or as agreed to by the submitting party;
- (b) The submission of protests by parties subject to this Code concerning any determination by him;
- (c) Hearings in connection with all submissions and protests; and
- (d) Reconsideration by him of any of his determinations.

ARTICLE III ADVERTISING CLEARANCE

Section 1. No cigarette advertising shall be used unless such advertising shall first have been submitted to the Administrator and determined by him to be in compliance with the standards of this Code; provided that by regulation promulgated by the Administrator specified advertising may be exempted from the requirement of such submission but not from the requirement of compliance with the standards of this Code.

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ARTICLE IV

ADVERTISING STANDARDS

SECTION 1. All cigarette advertising and promotional activities shall be subject to the following:

(a) Cigarette advertising shall not appear:

- (i) On television and radio programs, or in publications, directed primarily to persons under twenty-one years of age;
- (ii) In spot announcements during any program break in, or during the program break immediately preceding or following, a television or radio program directed primarily to persons under twenty-one years of age;
- (iii) In school, college, or university media (including athletic, theatrical and other programs);
- (iv) In comic books, or comic supplements to newspapers.

(b) Sample cigarettes shall not be distributed to persons under twenty-one years of age.

(c) No sample cigarettes shall be distributed or promotional efforts conducted on school, college, or university campuses, or in their facilities, or in fraternity or sorority houses.

(d) Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success, or sexual attraction.

(e) Natural persons depicted as smokers in cigarette advertising shall be at least twenty-five years of age and shall not be dressed or otherwise made to appear to

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be less than twenty-five years of age. Fictitious persons so depicted in the form of drawings, sketches or any other manner shall appear to be at least twenty-five years of age in dress and otherwise.

(f) Cigarette advertising may use attractive, healthy looking models, or illustrations or drawings of persons who appear to be attractive and healthy, provided that there is no suggestion that their attractive appearance or good health is due to cigarette smoking.

(g) No cigarette advertising shall contain a picture or an illustration of a person smoking in an exaggerated manner.

(h) Cigarette advertising shall not depict as a smoker any person well known as being, or having been, so at date.

(i) Cigarette advertising shall not depict as a smoker any person participating in, or obviously having just participated in, physical activity requiring stamina or athletic conditioning beyond that of normal recreation.

(j) Testimonials from athletes or celebrities in the entertainment world, or testimonials from other persons who, in the judgment of the Administrator, would have special appeal to the persons under twenty-one years of age, shall not be used in cigarette advertising.

Section 2 No cigarette advertising which makes a representation with respect to health shall be used unless:

(a) The Administrator shall have determined that such representation is significant in terms of health and is based on adequate relevant and valid scientific data;

(b) If the Administrator shall have determined it to be appropriate, a disclaimer as to significance in terms

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of health shall be set forth in such advertising in substance and form satisfactory to the Administrator; or

- (c) The Administrator shall have determined that the representation with respect to health in such advertising is not material

SECTION 3. The inclusion in cigarette advertising of reference to the presence or absence of a filter, or the description or depiction of a filter, shall not be deemed a representation with respect to health unless the advertising including such reference, description or depiction, shall be determined by the Administrator to constitute, through omission or inclusion, a representation with respect to health. If the Administrator shall have determined that such advertising constitutes a representation with respect to health, the provisions of Section 2 of this Article shall apply.

SECTION 4. No cigarette advertising shall be used which refers to the removal or the reduction of any ingredient in the mainstream smoke of a cigarette, except that it shall be permissible to make a representation as to the quantity of an ingredient present in the mainstream smoke or as to the removal in toto of an ingredient from the mainstream smoke, or as to the absence of an ingredient normally present in the mainstream smoke, if:

- (a) The Administrator shall have determined that such representation is significant in terms of health and is based on adequate relevant and valid scientific data; or
- (b) A disclaimer as to significance in terms of health shall be set forth in such advertising in substance and form satisfactory to the Administrator; or
- (c) The Administrator shall have determined that a disclaimer is unnecessary for the reason that the

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representation in such advertising has no health implication or that such implication is not material; and

- (d) The quantity of such ingredient is determined and expressed in accordance with uniform standards adopted by the Administrator for measuring the quantity of the ingredient present in the mainstream smoke, provided that, until such uniform standard is adopted, the quantity of such ingredient may be determined and expressed in accordance with any recognized scientifically valid method disclosed to the Administrator without any requirement of confidential treatment.

Section 5. Any advertising determined by the Administrator to be in conformity with the Code may include the following legend: "This advertising (label) conforms to the standards of the Cigarette Advertising Code."

ARTICLE V

PROCEDURES IN EVENT OF VIOLATION OF CODE

Section 1. Any person, firm or corporation subject to this Code, who violates any provision of this Code, shall, in the discretion of the Administrator with respect to each such violation, pay to the office of the Administrator as liquidated damages, and not as a penalty, a sum, not to exceed One Hundred Thousand Dollars (\$100,000), as determined by the Administrator after consideration by him of all relevant facts. The Administrator shall establish regulations for the determination of such violation and for the assessment and payment of such damages. No sanction shall be imposed without affording a hearing to the alleged violator. Upon written request from the Administrator, an alleged violator of the Code shall promptly deliver to the Administrator any material and documents in its possession which

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are relevant and material to a determination by the Administrator as to whether the Code has been violated.

SECTION 2. Nothing herein contained shall be construed to give any person, firm or corporation, other than the Administrator, any cause of action.

SECTION 3. In the event of a violation of this Code, the Administrator in his discretion may make public the fact of such violation in such manner as he may deem appropriate.

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HUMPHREY

in

produced by F. J. R. T. C.

A Frank Statement to Cigarette Smokers

RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings.

Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive should be disregarded or lightly dismissed.

At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the scientific significance of these experiments.

Distinguished authorities point out:

1. That medical research of recent years indicates many possible causes of lung cancer.

2. That there is disagreement among the authorities regarding what the cause is.

3. That there is no proof that cigarette smoking is one of the causes.

These statistics pertaining to link cigarette smoking with the disease could apply with equal force to any one of many other aspects of modern life. The validity of the statistics themselves is questioned by numerous scientists.

We accept an interest in public health as a basic responsibility, paramount to every other consideration in our business.

We believe the products we make are not injurious to health.

We always have and always will cooperate closely with those whose task it is to safeguard the public health.

For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during those years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence.

Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of a serious disease is a matter of deep concern to us.

Many people have asked us what we are doing to meet the public's concern aroused by the recent reports. Here is the answer:

1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies.
2. For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE.
3. In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities.

This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it.

TOBACCO INDUSTRY RESEARCH COMMITTEE

1111 EMPIRE STATE BUILDING, NEW YORK 1, N. Y.

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A Frank Statement to Cigarette Smokers

Published January 4, 1954

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TOBACCO INDUSTRY RESEARCH COUNCIL

5400 Empire State Building, New York 1, NY

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